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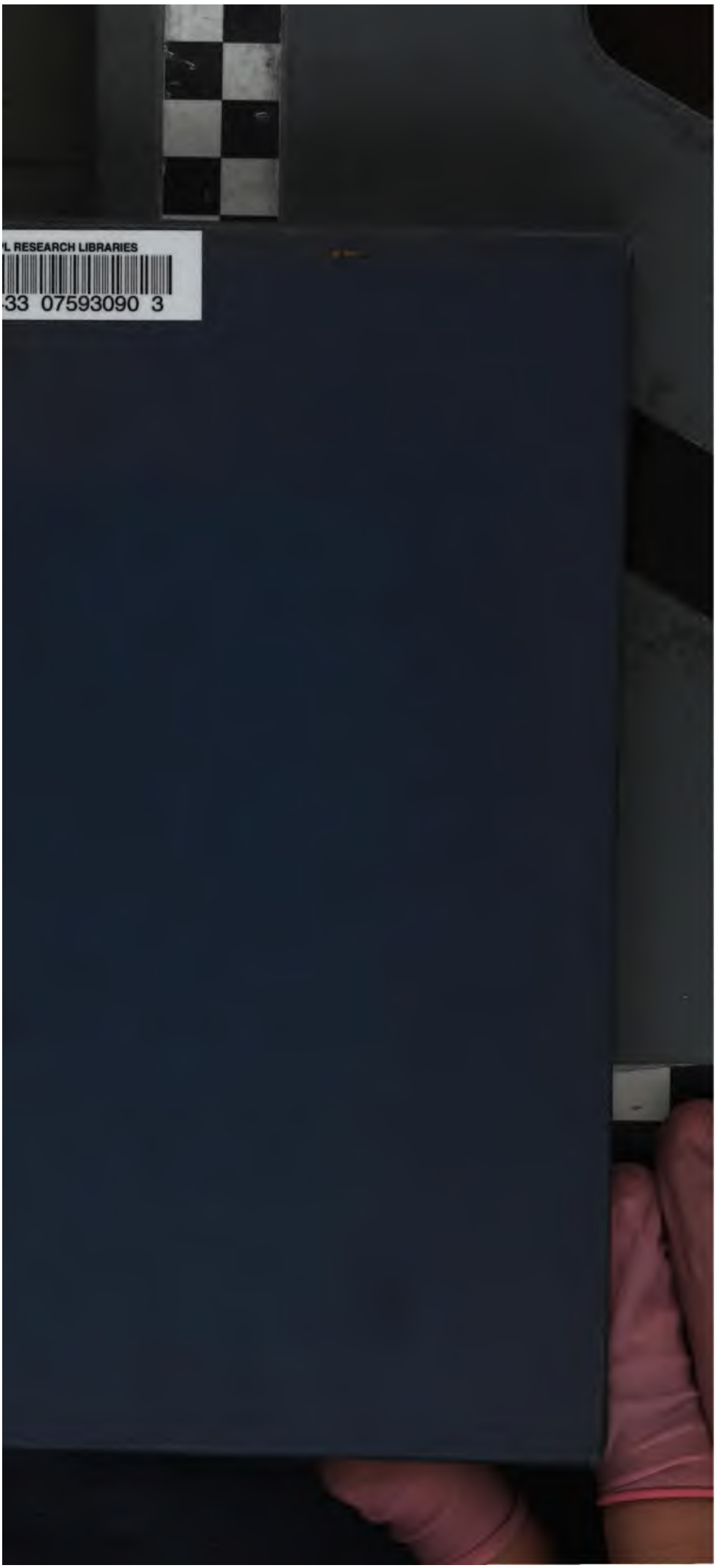
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CONSIDERATIONS

ON

THE CHOICE

OF

PUBLIC RULERS;

ON

THE EXTENT OF THEIR POWERS;

AND ON THE BEST MEANS OF

SECURING THE ADVANTAGES,

AND

REFORMING THE ABUSES,

OF

POPULAR ELECTIONS.

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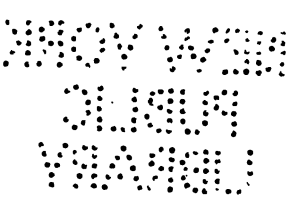

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INTRODUCTION.

IMPRUDENT trust to agents and servants, in business or in private families, is found to corrupt their morals; producing peculation and disorder, in proportion to the extent of the trust; to the number employed; and to the temptations to which they are exposed: whereas, a proper control checks dishonesty, and encourages diligence, decent manners, and good morals. Hence, as the highest national agents are but men, we must conclude, that these causes will have similar effects upon them.

AND consequently there seems to be reason to suppose, that the virtue of the public agents of the ancient Romans, and the depravity of the public agents of the modern French, will be found to have been produced by the respective constitutions of these nations: That the Romans had been cautious in giving trust, and that

they had preserved a proper control over their agents; but that the French had given very imprudent trust to theirs.

To ascertain whether these suppositions were, or were not, well founded, was the object of an enquiry, of which the following considerations were the result.

SECTION I.

A Cursory View of the Roman Constitution, from the building of Rome to the 385th year of the Republic.

FROM the building of Rome to the usurpation of Tarquin the Proud, a period of about 230 years, the first magistrate of the Romans was called King. But their historians have not given any account of the particular powers annexed to that office, nor of the power of the Senate, or of the society collectively, during that period. They seem, however, to have recorded every change which took place in these powers; at least they have given a very particular account of the new method of taking the votes of the people by centuries, which was, as they express themselves, established by Servius Tullius, the last legal King.

ALL the Roman historians agree, that the two consuls who were appointed after the expulsion of Tarquin, to execute the office of king, were jointly invested with the same power which had been formerly intrusted to the kings.

BUT the powers which the society retained and exercised themselves, the particular powers intrusted to the senate and to the consuls, at that period, are not specified.

BY the narratives of the operations of these different powers, however, after that event, as the history becomes more full and authentic, we arrive at last at a certain knowledge of what these different powers were.

AND the violent disputes, which continued for 140 years after the expulsion of Tarquin, about the patrician rights, but more particularly, the dispute betwixt the people and the se-

nate, about the negative which it possessed upon all laws, which began soon after the expulsion of Tarquin, made the rights of these different parts of the government be much more fully stated than they otherwise would have been.

And it is obvious, that the senate frequently made an improper use of the power which it possessed, of a negative upon laws, particularly in refusing its consent to have a code of written laws to regulate the judges, which was the immediate cause of that power being withdrawn.

If the senate had been claiming greater power than it possessed during the time of the kings, or, if the society collectively had been claiming new powers, such claims must have been taken notice of, and retorted upon one another by the parties. As no such charge therefore was made, we must conclude that the society collectively had always exercised

the sovereign power and the disposal of offices; that the senate had always possessed the same powers, which it exercised during these debates, and that the consuls, during that period, possessed the same power jointly, which was formerly possessed by the kings.

THE Roman historians show a want of attention, in representing the power of the kings as nearly absolute, and at the same time state, that the consuls were vested with the same power jointly; by which they inform us, indirectly, that the kings had always been legally as much under the control of the senate, as the consuls were afterwards. They seem to have been led into this inconsistency by the records of that early period, which narrated the principal events only, in which the kings were the supreme commanders and directors.

BUT if all the speeches in the senate and forum; if all the acts of the senate, and of the as-

semblies of the people, and all the orders and directions of the senate to the consuls, were expunged from the succeeding history, the consuls would then appear to have been as powerful as the kings, as no narratives would remain, but of those transactions in which the power of the consuls was supreme.

THE Roman people, in appointing two men, called consuls, to execute an office, instead of one man, called king, exercised their sovereign power over that office, in the same manner as British sovereigns exercised their power over the office of lord high admiral, when they appointed a certain number of men to execute that office. And the causes for both alterations were of a similar nature.

THE kings of Britain found, that the powers of the lord high admiral were dangerous to them; and the Romans had been taught, by the usurpation of Tarquin, that the possession of

their kings for life, was incompatible with liberty. And in both cases similar remedies were adopted. The Romans not only divided the power between two men, to be called consuls, but also limited the duration of their power to one year. This alteration had the desired effect, not only in checking the presumption of the consuls during the time of their power, by preventing them from acquiring improper influence in the army; but there was no instance afterwards of any man claiming a right to that high office, on account of his being the son of a consul, as had been done by several of the sons of the kings, before Tarquin made his claim effectual.

Historians seem to have been also inaccurate in stating the manner of appointing senators. Some of them say positively, that when the first hundred were appointed, each of the three tribes chose three, each of the thirty curiæ chose three, and that Romulus chose

one. And when another hundred were added, upon incorporating the Sabines, it is expressly said, that they were chosen by the people; yet others say that the kings, and afterwards the consuls and censors, had the power of nominating the Senators.

It is probable that this seeming contradiction was owing to the notoriety of the people's power at the time, which made historians think it unnecessary to mention it in every case; that they mean the same thing by both modes of expression. For the same reason, they frequently call a law, the law of a certain consul; yet they do not mean that he enacted it. In like manner, when a king is said to appoint senators, they mean that he presided at the meeting; and suppose it to be understood, that the votes, or approbation of the people, determined the matter, as in the case of enacting laws. That such is their meaning appears more clear, when we reflect that Livy

and other early historians express themselves so frequently in both ways. But what is most conclusive, none of the historians have denied the authenticity of these narratives, which state that the people elected the senators, and point out the particular manner of electing the first hundred, which they would have done, if they had supposed that these narratives contradicted their own account of these transactions.

We are therefore to suppose, that the Roman historians understood these expressions, that the king, consul, or censor, nominated senators, as implying, that it was done either with the actual votes, or with the concurrence of the people. That the power of the people in that matter was so well known, that the mode of expression could not be misunderstood; as English historians, for the same reason, frequently call an act of parliament, an act of the king or his minister.

THE disputes which took place between the patricians and the plebeians, after the expulsion of Tarquin, were occasioned by the abuse of the powers, which the method of taking the votes by centuries, had, indirectly, put into the hands of the former over the latter. After many violent altercations, and being frequently on the brink of civil war, the patricians were obliged to yield up all the exclusive privileges which they had usurped, when settling the consular office, and which they acquired by the new method of voting, to allow the poorest Roman an equal vote with the richest, in enacting laws, and to be equally eligible to offices, as had been the constant practice in Rome, from the building of the city until the method of taking the votes by centuries was established. The lower classes recovered their right of having equal votes in enacting laws, in the 304th year of Rome, by the establishment of the comitia by tribes; and the exclusive right

of the patricians to the high offices, was finally annulled by the law of Licinius, in the year of Rome 385, which brought the constitution to its original form. No alteration was afterwards made, until the murder of Tiberius Gracchus, in the 620th year of Rome.

SECTION II.

On the nature and tendency of the powers intrusted to public agents by the Romans.

By the Roman constitution, as restored to its primitive principles by the law of Licinius, any Roman, upon being elected to the office of questor, was entitled to a seat in the senate for life. And no person could be elected to the higher offices of edile, pretor, consul, or censor, until he had officiated in each inferior office. All the executive officers were elected annually, by the people; consequently, supposing the consuls to live twenty years at a medium after being elected, as there were, with few exceptions, two new ones every year, there would be in general about forty consulars in the senate.

The number of questors, ediles, and pretors, being gradually increased with the increase of

business, there would probably be about a hundred of these different officers in the senate at this period, who had not arrived at the consulate. And that assembly was filled up at each census to its usual number of three hundred, from the inferior offices, by the censors, not in private, but in the public assemblies of the people, by a general nomination. But whether that nomination required the confirmation of the people, is not determined by historians.

THESE senators, however, had all acquired considerable offices from the people, by their talents and character.

THE Roman senate was thus formed of men who were elected by the society to the public offices, as possessing the greatest talents, and having the greatest experience in business.—But its office and powers were totally different from those of any modern senate.

THE Roman senate was intrusted with the supreme direction of all national affairs, with full power of control over the military force, of giving general orders to the consuls, treasurers, and other executive officers, and of transacting all business with foreign nations. But it had not a power either to appoint, or to give detailed instructions to any executive officer.

THE executive officers had full power to execute the orders of the senate, in the way they judged most proper.

THE Romans for many years allowed the senate a negative upon every proposed law.—But as that power was exercised with greater partiality in favour of the higher ranks, in proportion as the difference of rank increased, it was finally withdrawn when the comitia by tribes was established, in the 304th year of Rome. After which period, as the majority of the society, each man having an equal vote in

his tribe, could make any new law or annul an old one, erect a new office or abridge the power of old ones, the senate had no absolute power whatever; for if it abused the powers with which it was intrusted, the society could deprive them of it in a legal way by a new law. The senate of Rome was not sovereign; it was only a select committee of the society intrusted with the management of the current public business; and accordingly, when new laws, or new taxes, were necessary, or an important war was to be engaged in, the matter was laid before an assembly of the people (a majority of whom were the only sovereign) and left to their decision. According to the same rules of prudence, the Romans reserved to themselves the sole power of appointing all public officers.

They seem to have foreseen, that intrusting this power to a few men, selected for the purpose, would irresistibly tempt them to appoint their own friends and favourites; and that if

they intrusted it to the senate, to which was committed the management of public affairs, such a power would not only tempt the senators to engage in intrigues to obtain the places for their friends, but would also tempt them to form schemes for their mutual advantage, at the expense of the public; which, besides the great national loss, would corrupt the morals of the senators and officers, generate intrigue and faction in the senate, and make the people suspicious of all their designs.

THE imprudence of such a measure is so obvious, that we cannot give the Romans much praise for not adopting it. A number of plain men, all equal in rank, and nearly equal in fortune, as the Romans were when they formed their constitution, had no inducement to give such imprudent trust to any set of persons. Nor is there any instance of any company of men in business, not instituted by a government, having adopted so ruinous a measure. But the

Romans deserve much praise for parting with so much power as they did, in appointing a senate, and giving that senate the sole power in directing the current public business. The great advantage of appointing a committee to transact the public affairs of a town, or even for managing the business of large companies in trade, is now so well known, that the measure is universally adopted. But as the Romans seem to have had no example to follow, and being very illiterate when they formed their constitution, their adopting such a regulation showed great prudence; and they showed equal prudence in not allowing their senate absolute power over their persons and property, or the disposal of offices, as these are trusts by far too great for human nature.

Hence, as the Roman senate, or directing council, had no power to take money from the people, or to give commissions, places, or contracts, to their friends, and as they themselves

had to pay a full share of every tax, without having it in their power to profit by conniving with the public officers, or with those who appointed them, they were under no temptation to increase the number of offices, or in any other way to involve the nation in unnecessary expense. It seems to have been owing to a general belief, not only that this was the case, but also that the senate was composed of men of the greatest talents and virtue; that no patriot is mentioned by history, not even during the dissentions between the senate and people about patrician rights, as accusing that council of wasting the public treasure by an unnecessary accumulation of offices, or by extravagant contracts. Nor did the patriots of Rome ever charge the senate, not even during the sixteen years that Hannibal continued in Italy, which occasioned such distress and danger to the nation, with being unfit to manage public business. Nor are any of the wars of that republic imputed to the schemes of a

party. Nor is a ruling or opposition party in the senate ever mentioned by any historian, from the building of Rome to the final subversion of the republic by Augustus and Antony, which was a period of 711 years.

The harmony and consequent decorum and respectability of the Roman senate, forms a striking contrast, when compared with the open disgraceful broils, and the still more disgraceful private intrigues, of all senates which have had the disposal of offices, or could connive with those who had that power. Committing the sole direction of the national force to a numerous senate so constituted, but retaining the disposal of commissions, seems to have been a most prudent arrangement, as it was peculiarly the interest of the senators to keep peace and enforce the laws, and to prevent any individual from rising to absolute power. And as every individual of the army depended upon the people for promotion, the

senators could not expect that the army would assist them to extend their power over the people; nor did the senate ever attempt to make use of the army for that purpose: so that by this wise regulation, the Roman armies could be augmented to any extent, without endangering public liberty. The method of electing the public officers by the people, not only prevented an increase of the army from being dangerous to liberty: it also afforded the highest encouragement to virtue, as it converted the public offices into prizes, to be obtained by those who excelled in abilities, integrity, and patriotism. For when electors to an office are so numerous, that the value of the office will not pay the expense of bribing a majority, and if it cannot be obtained by the interest of friends, then, acquiring a character for abilities, integrity, and application to business, is the direct and surest method to obtain the votes of the electors, whether they be virtuous or vicious. A virtuous elector will vote for the

candidate who he thinks possesses these qualifications in the highest degree, both from regard to such a character, and also from regard to the public good. An elector of a selfish disposition will also give his vote the same way, though in part from different motives.—For as the views of such a person are to serve himself, he will be ready to give his vote to any person for money, or for any other advantage. But where the electors are so numerous that the majority of voters can have no hope of obtaining the office for themselves or friends, or of obtaining a bribe, in that case it is the interest of the majority, however selfish, to vote for the best qualified and most patriotic candidate, as their personal interest, by having a share in the public advantages, will by that means be served, and their national or local pride gratified, in proportion as the candidate is qualified and honest in the discharge of his trust.

BESIDES, even the worst of men respect and admire a virtuous character; and where interest does not interfere, will always prefer a good to a bad man. Even bands of robbers, who have occasion to deposit their plunder, are careful to choose the most honest person they can find to intrust it with; and if they have a choice of two or more honest men, they choose the one most capable to protect it, that is, the person of the greatest honesty and abilities.

HENCE, as the majority of the people elected all the public officers at Rome, every person who aspired to preferment, would exert himself to the utmost to please the society, in order to gain their votes, not by a mean, cringing, base conduct (as the practice is where a few men have the disposal of offices) but by acquiring a character for talents and integrity.

THE Roman youth seem to have made themselves first known when learning their exercise

in the Campus Martius, and afterwards in the lower public offices; and it was by exertions in these, and by patriotic actions which were conspicuous to the whole people, that candidates recommended themselves to the higher offices.

WHAT a noble emulation must such views have excited in the breast of every Roman! And what an encouragement to the practice of the noblest virtues, when a character for such was the only road to power and pre-eminence! This view of the Roman constitution seems sufficiently to account for the numerous instances of wonderful disinterestedness and patriotism, recorded by the Roman historians, which have been looked upon as fabulous by the generality of readers. And even philosophers, who could not disbelieve facts so well attested, seem to have thought them above nature, and have endeavoured to account for them, by supposing that the ancient Romans

were of more innate virtue than other nations, and have concluded that a republican government was only fit for such a people.

But it appears that the prudence of the Romans, in reserving to themselves the sovereign power over their persons and property, and the election of the public officers, were the causes which kept the senators honest, produced so many instances of disinterested patriotism, and brought into the public offices an uninterrupted succession of men of greater judgment and worth, than have appeared in the public offices of that, or of any other country, since that constitution was destroyed.

Besides these invaluable good effects upon the senators and candidates for public offices, this mode of election had an equally good effect upon the whole society.

For as all men wish to be of consequence, the surest way of obtaining that end in such a

society as that of ancient Rome, was to acquire a character for affability, integrity, and benevolence; to live in a plain hospitable way, so as to be in ability to assist the poor, or any neighbour in an amergency, and to pay every debt pointedly—by these means acquiring influence with the poor and with neighbours; which influence would command respect from the highest ranks to those which were lower. And as the manners of the higher ranks are imitated by the lower, all these causes would concur in making benevolence, honesty, and an open affable behaviour, with plain hospitable manners, greatly to predominate in such a society. All these happy effects flow from the mode of popular elections, besides that of filling the public offices with men of the best morals and greatest abilities. And this effect would of itself form a most powerful cause of preserving order, of checking vice, and of encouraging virtue; as magistrates of integrity and abilities are of much greater consequence for promoting these ends than the best laws; as they not only

distribute justice impartially, and set a good example to the people, but they are obeyed more from respect to their character, than from fear of their power. Thus it appears, that the virtue of the Romans has been owing to the prudent regulations of their constitution, and the rewards it held out to those who excelled.

And their passion for war will be found to have been owing to the advantages which their constitution gave them over other nations in that art, and to the pecuniary advantages which the conquerors derived from the laws of war in those ages. It was the universal practice in those times, for the conquerors to take possession of the persons and property of the conquered nation, to sell what part of the people they pleased for slaves, and to sell or let what part of the lands they thought proper.—And it was the custom of the Romans, to appropriate a part of the spoil to pay the expenses of the war, and to help to fill the public

treasury. A part was given to the army, and a part of the land divided among the poor; but they generally left the far greatest part of the conquered people in possession of their property, and under their own magistrates and laws, upon a treaty, as allies of Rome. By the Roman method of electing officers, the strongest emulation was excited in the breast of every individual in their armies, as it was very common for privates to rise to high commands, and sometimes to the consulate. And as the consul was certainly to be changed at the end of the campaign, he would exert himself to obtain honour and a triumph, during his command.

THE next superior officers, not having him for a rival, would second him in all his schemes to the utmost of their power, to raise their own character and obtain the consulate.

THE lower officers and privates would exert themselves to acquire a character for conduct

and bravery, to obtain advancement. An army with such incitements to exertion, and commanded by a general of abilities, must be almost irresistible.

When it is also considered, that the Roman armies were employed by a senate, the principal persons in which were old generals of the first-rate talents, who would form prudent schemes, and proportion the force to the expected opposition; and that the commanders were under no control in the detail of operations, to prevent them from stationing or marching their troops, as they judged best, or from embracing any favourable opportunity for action: keeping these circumstances in view, we cannot wonder that the Roman armies were generally successful, and always ultimately victorious. These causes made war both honourable and profitable to the nation, as well as to the army, and tempted the Romans to continue that inhuman trade. Being constantly en-

gaged in successful war, the cruel practice of plundering the vanquished people, and selling their persons, with the equally inhuman practice of allowing domestic slavery, must have had a great effect in hardening the hearts of the Romans, and corrupting their morals—counteracting the good effects of their constitution.

HENCE, as their constitution made them excel all other nations, notwithstanding these powerful causes of corruption, how much more would they have excelled if these causes had not existed?

THAT they did excel all other nations in virtue, is confirmed by the uniform testimony of history; and Mr. Echard, after having diligently examined the most authentic records, with a view of compiling a history of that people, in his preface to that work, says, "They were born and nursed up in plundering and murder,

and trained up in villainies; yet they became wise, frugal, just, and passionately fond of glory, until they infinitely overtopped the rest of mankind, and obtained the sovereignty over the rest of the world—more by the reputation of their virtue, than by the force of their arms."

This wonderful change in the morals of the Romans, seems to have been a necessary consequence of the constitution by which their public affairs were regulated, previous to the murder of the Gracchi. But after that event, a new system took place in Rome, by which the honours and offices of the state could be obtained by violence, which made corresponding talents be cultivated, and produced corresponding manners.

As this total change in the nature of the Roman constitution has not been pointed out by historians, it seems necessary to recite the particulars.

SECTION III.

On the Causes of the Ruin of the Roman Constitution.

THE law enacted in the 385th year of Rome, which took from the patricians their usurped rights, was called the Agrarian law of Licinius, because it also prohibited any Roman from possessing above five hundred acres of the conquered lands. But the rich had evaded the law in various ways; and many persons were, in the time of Tiberius Gracchus, possessed of very large estates, a part of which was cultivated by tenants, but the greatest part by slaves, which lessened the number of independent voters.

To form a just idea of the propriety of re-enacting this law, it is necessary to reflect, that the land in Italy is in general very rich, lies in a fine climate, was highly cultivated in the

time of Tiberius, and that the produce sold very high to the rich city of Rome and its populous neighbourhood; so that the rent of five hundred acres would probably be equal to from one hundred to ten thousand pounds of money at its present value; according to the situation, quality, and productions of the land, vineyards, gardens, and villas near Rome, giving very high rents.

But, besides these rents from land, a Roman might have mortgages upon land, or money lent to proprietors of land, or to any other persons, to any amount.

They might have any number of houses let for rent in the cities, and any other property, in ships, or in manufactures. The law did not limit the accumulation of property; its sole intention was to stop the monopolizing of land, which had come to such a height as to prevent great numbers of persons in good circumstances

from having it in their power to obtain a sufficiency of free-hold for a house and garden. As land cannot be increased in quantity, the Romans seem to have thought it in the highest degree unjust, to allow one person to monopolize as much as would enable two or three hundred families to live independently.

But no person can consider this as a levelling law, any more than those men may be called levellers, who, to preserve a balance of power amongst the nations in Europe, endeavour to prevent any nation from acquiring such extensive territory as might endanger general liberty. And Tiberius Gracchus, and many other Romans, thought that it was necessary to prevent any of their countrymen from engrossing too much land, lest they should by that means rise to absolute power; as the proprietors of land have necessarily much power over the occupiers.

Tiberius Gracchus, grandson of the great Scipio, who conquered Hannibal, got himself elected a tribune in the 620th year of Rome, with a view to enforce the law of Licinius; and he got it renewed, notwithstanding the opposition of the rich, and offered himself as candidate for the tribuneship next year, to carry the law into practice. But the senators and rich men, detesting the law, determined to oppose his re-election by force, and ordered all their clients and retainers to attend them at the election, armed with clubs.

On the day of election, the senate ordered the consul to seize Tiberius; but he answered, that it was contrary to law to seize a tribune not condemned, or engaged in any illegal act. Upon this refusal, Scipio Nasica (a cousin of Tiberius) as leader, with the greatest part of the senators, went in a body, and being joined by their dependants and others of their party, immediately attacked the people with clubs,

and murdered Tiberius and about three hundred of his friends.

However hard this law might bear upon some individuals, who had unadvisedly purchased these lands, they had themselves to blame, as they knew that such purchase was contrary to law. Nor was it any greater hardship than numbers of individuals are obliged to submit to under every government, who, after launching out into different branches of business, a monopoly is granted, or a prohibition takes place, or a heavy tax is laid on, which ruins the trade and all concerned in it. Even under the mild government of England, great numbers of labourers who had built houses, and taken in pieces of commons, have, after long possession, been deprived of them, because they had no legal right; and many people have bought possessions of stalls in markets, which have, for the good of the town, been taken from them, without any compensation.

But when a majority of the Roman people, legally convened, enacted a law to oblige every one to give up certain possessions which they held in defiance of a former law, as the effects of this law fell upon the senators and rich men, instead of submitting peaceably, as they expected poor men to do in like cases, these proud men murdered the person who took the lead in enacting the law, and those who supported him.

No king, or other member of a government, could be safe for a moment, if such sanguinary vengeance were to be taken by individuals, when injured in that way.

This is the first blood that was shed in the Roman public assemblies, notwithstanding the very great number of people that had voted at them for 620 years. The magistrates, instead of making inquiry to find out the perpetrators of these atrocious murders, banished many

citizens for having voted for the law, which was destroying the right of voting, and all legal order, and introducing force and anarchy into the public assemblies.

HISTORIANS say, that the senators meant, by the terror of these acts, to deter any person from reviving these laws for the future.

BUT this example which was set by the senators, of murdering the proposer and supporters of a law, when they despaired of opposing them effectually by votes, gave a deep wound to the constitution, perplexing the people's ideas of what was legal, and holding up a most pointed invitation to every bold party, or individual, to repeat the crime.

AFTER these violent proceedings, no person ventured to enforce the Agrarian law, until Caius Gracchus, brother of Tiberius, was elected tribune of the people, about nine years

after the murder of his brother, when he prevailed with the people to choose himself and two other men to be commissioners, to examine into the extent of land that each individual held above 500 acres*.

To evade the operation of the law, the party of the rich represented to the people, that it would be unjust to determine the quantity belonging to any individual, until the boundaries were settled, and that judges should be appointed for that purpose, as Caius and the other two commissioners could not have time for so much business. This being a fair proposal, it was agreed to by the people, notwithstanding the opposition of Caius and his party; and the persons named by the senators and rich men, were elected to that office.

* The Licinian law had no tendency to unhinge the rights to property, as has been erroneously asserted, as it did not inquire into the rights by which lands were held, but into the quantity only, to prevent a monopoly of land.

THE regard which in this instance the people paid to justice, should have induced the sufferers to apply to them by petition and calm representation, to obtain a mitigation of the law where its effects were most severe, and offer some compensation to the poor, who were great sufferers by the clandestine robberies of these individuals. But these proud men, having so many mean sycophants at their command, under the name of clients, determined to abolish these laws of the Gracchi by force; and Opimius the consul took the lead, and ordered a general assembly of the people for that purpose. To support himself and his party, and to overawe the independent voters, he brought a body of foreign troops into the city, which he used as a guard, though contrary to law. But this ruinous precedent was overlooked by the senate and other magistrates, as it served their present purpose. On the day of the assembly, Opimius, under frivolous pretences, ordered these troops to attack Caius and the people;

the senate and their clients joined the troops, and murdered Caius and above three thousand of the people.

Not content with this carnage, the consul ordered all the friends of the Gracchi to be thrown into prison, and there put to death. He also confiscated their goods, and their widows were forbid to wear mourning.

All this was done without trial of any kind, or even charging these people with any illegal act.

As this sanguinary violence was committed by the senate and consul, in defiance of law, it was another precedent, more destructive than the former, of all order and regular government, habituating the people to such practices, putting an end to confidence in legal protection, and showing to every one, how the strongest in arms might rule in these assemblies, by

that means tempting the ambitious to increase the number of their clients, and to engage the most ferocious, as the fittest for these purposes. As these transactions took place at a time when the generals and public officers had many opportunities of enriching themselves, some being engaged in conquering opulent kingdoms, and others in governing great kingdoms with absolute power, as pro-consuls, all these officers, in general, after this, took every method of amassing money, and of engaging clients, to increase their influence in these tumultuous and sanguinary meetings of the people. It is obvious, that no individual durst vote against a candidate with such attendants. They were therefore forced either to give up voting, or to unite in bodies, and these bodies joined some rich man's clients for hire; so that the views of both voters and candidates were totally changed from what they were, when a majority of votes, taken in a peaceable way, decided every law and election; and when the

value of offices would not pay the expense of bribing a majority, which are essential requisites for making popular elections an encouragement to virtue.

The offices at that time were become so very valuable, that many candidates would be willing to give large sums to obtain them; but the number of voters being about four hundred thousand, no private fortune could bribe a majority. It was therefore peculiarly unfortunate, that the example set by the senators, of using force, showed candidates a way, by which a few thousand desperate men, properly organized, could clear the forum of all opponents, and elect their commander to any office. Nothing could be more fatal than introducing this savage practice at this time, as the Romans were not as formerly electing their own magistrates and generals only. They were by their conquests become a nation of absolute rulers, and tempted, like other absolute rulers,

to oppress the people under their dominion. They elected at this time, or soon after, a king of Africa, a king of Spain, a king of France, a king of Greece and Macedon, and a king of Asia Minor: that is, they elected pro-consuls for all these kingdoms, and also for Sicily, Syria, Egypt, and other smaller ones, and these officers had the same power as absolute kings in their provinces.

If electing one king puts a whole nation in a ferment, producing the most shameful bribery and sanguinary violence, what must be expected when the inhabitants of one city have the disposal of so many mighty kingdoms; and where the candidates could gain their election by such sanguinary methods?

After this, it became more and more common, for parties to go to the assemblies armed, and if they could not carry their point by the number of votes, they murdered, or drove their

opponents out of the forum, and then enacted a law, or elected a magistrate or general, very quietly; and these laws and elections were considered as valid, both by the senate and people. In this state of things, it became the interest of the powerful leaders, to take the direction of national affairs from the senate, where there were many who were jealous of and opposed their designs, and to bring these matters into the assemblies of the people, where their armed followers enabled them to dictate such schemes as suited their ambitious views.

Thus the three regulations of the constitution, which appear to have been the principal causes of the virtue and prosperity of the Romans, were totally changed.

The enacting of laws, and the election of public officers, instead of being decided by a majority of the society, voting in a peaceable way, were decided by assemblies, composed of

the armed followers of a few powerful men. And these tumultuous sanguinary assemblies, as sovereign, took upon them to direct the national business, which, by the constitution, had been wisely intrusted to the senate; by these means putting an end to order, and allowing savage force to rule. Hence, a few ambitious individuals either made the city a scene of tumult and massacre, by their struggles for power, or, by forming leagues among themselves, directed the public measures, and divided the offices, the armies, and provinces of the republic, amongst them. By this practice of determining laws and elections by force, which was introduced by the senate and rich men of Rome, the great offices became prizes to be fought for, and won by murder and assassination.

As these prizes were greater, and more numerous than ever were contended for in any

country, it produced a scene of violence and murder, unequalled in history. Such a system makes it absolutely necessary, not only for low individuals, but also for men of considerable power, to attach themselves to the great leaders, both for safety and for preferment; by which means, a few of the most powerful dictate to the inferior leaders, as tyrannically as they do to the lowest ranks, and take vengeance upon their opponents who are of the higher ranks, in a much more sanguinary manner than upon those who are of the lower, which was exemplified in a terrible manner, during the contests between Marius and Sylla, and afterwards during the time of the triumvirs, when thousands of the richest and most respectable men were murdered, and their estates confiscated. Nor was there any end to civil war and masacres, until the struggle for power ended in Despotism. Then the power of the rich was levelled with that of the mean-

est: then, so far from rich men insulting their poor neighbours with impudent retainers, they durst not be seen attended by servants, the appearance of riches making them objects of vengeance to the tyrants.

SECTION IV.

The Constitution of the American States, compared with the Constitution of the American Bank.

THAT the Roman constitution was formed upon the most prudent principles, was fully, though indirectly, acknowledged by the American legislators, when forming a constitution for their Bank. That transaction therefore deserves particular notice.

THE same men, who were leaders in the convention which formed a constitution for the supreme government of America, in the year 1787, called the congress, were also leaders in congress in the year 1791, when a constitution was formed for a considerable number of individuals, who were to be engaged in a joint undertaking, called a bank. As there was to be twenty-five thousand shares of Bank Stock, and it was to be expected that there would be always many thousand proprietors, and a

great majority of them very ignorant about the banking business; if the principles, therefore, upon which these American legislators had formed the national constitution were just and prudent, it might have been expected, that the managers of the bank would have been allowed at least as great power over the property of the bank, as they had taken to themselves over the property of the nation.

By the national constitution the president of congress holds his office four years, the senators six years, and those members called representatives two years. All of them are independent of the people during these respective periods. But by the constitution which was formed for the bank, the directors are not only elected annually, but they are liable to be superseded at any time by their constituents, and each director is liable individually, for every act which he has not protested against which the members of congress are not. Yet notwithstanding these different circumstances

in which these two sets of rulers were placed, which made it incomparably safer to trust the directors with power over the property of the bank, than to trust the congress with power over the property of the nation; yet the American legislators did not think it prudent to allow the directors of the bank any absolute power whatever.

They had taken full power to themselves to enact such laws, to lay on such taxes, and to create such offices, as they might think proper, without any concurrence of the people; yet they thought it prudent totally to restrain the directors of the bank from enacting any law whatever. The majority of the proprietors of bank stock, have the sole power of enacting laws. The directors are not allowed even a negative, and they are restrained by a particular clause from taking any salary, except what is given by the proprietors, although the sixth section of the first article of the national constitution begins thus: "The senators and repre-

" sentatives shall recive a compensation for their " services, *to be ascertained by law*, and paid " out of the treasury of the United States."

As the senators and representatives are the makers of the laws, it would have appeared more candid, if they had openly declared, that they were to take such wages as they themselves might from time to time think proper.

This is a power which none of these legislators would allow their own agents or servants; but as they had taken such a liberty with the purse of the nation, it is surprising that they were not ashamed to refuse the directors the same liberty with the purse of the bank. The difference between the powers which these legislators took to themselves over the property of the nation, and the powers which they thought necessary and prudent to trust to the directors over the property of the bank, forms a striking contrast, especially when it is kept in view, that there is sufficient power to com-

pel the bank directors to be answerable for their conduct. But the members of congress are collectively above law, and they had not made themselves answerable individually. In forming the national constitution, those legislators seem to have been swayed by prejudices in favour of certain political systems*, and by

* The far-famed trial by jury, is an instance of this prejudice and servility of imitation; for though its *principles* for equity and protection are above all praise, yet its *form*, and the unanimity required in the verdict, can be termed nothing less than absurd.

The American legislators, in forming, or in reforming the jurisprudence of the States, or of the Union, have not attempted any improvement in it. To require twelve men to think alike, on any subject, discovers, one would suppose, a very imperfect acquaintance with the structure of the human mind, and with the variety of aspect and of evidence which almost every case admits of: but, to require this under the pains of being held in duresse and threatened with starvation, is too ridiculous to be reasoned on, yet too true to be denied. Every conscientious juror has felt the irksomeness and absurdity of this, and the freedom of his mind fettered by its operation. A knave or a fool may, and in fact, has been known to starve a jury into compliance.

It is alleged, that in criminal cases this unanimity is required out of tender regard for the life of a fellow creature; and there are some who contend, that, should a majority, or two-thirds, be made decisive in other cases, yet humanity would require unanimity in matters of life and death. But even here experience has shown it to be unnecessary; for, in the country of our author, where the trial by jury is almost exclusively confined to matters of a criminal na-

a strong bias for personal power and emoluments; but in forming the constitution for the bank, their judgment seems to have been free from all bias. They gave the directors, therefore, such power only, as they judged necessary for executing the business of the company.

It is obvious that this constitution, which was formed for the bank by the American legislators, is exactly the same in its essential regulations, as that of the Roman republic. The directors, or senate of the bank, have full power to manage the current business, but the legislative power, and the disposal of offices, remain with the proprietors. This is certainly acknowledging in the most unequivocal manner, the superior excellency of the regulations adopted by the Romans, for the management of the common concerns of a society.

ture, involving life or limb, and where the jury consists of fifteen, of whom the narrowest majority is equally decisive for or against the person tried, it hath been asserted, and believed to be correct, that in an equal number of cases, tried by a jury of twelve giving an unanimous verdict (as is practised in South Britain) there hath been even a greater number condemned to death. Author's Friend.

SECTION V.

A sketch of a Constitution for an extensive Country, upon the Roman principles.

As the Roman constitution was at first formed for a few thousands of people possessing a small territory, and never afterwards altered, it is obvious that the inconveniences of its mode of taking the votes in one place, when electing officers, or enacting laws, would increase with the increase of the people, and with the extent of territory. And it has been supposed that these inconveniences cannot be obviated. To show the probability, however, that they may at least be much lessened, I shall attempt the sketch of an ideal constitution for an extensive country, upon the same fundamental principles of justice and common prudence.

For this end it is necessary in the first place to inquire, at what age the right of voting, and of holding civil offices, ought to commence? Civilized nations have, in general, thought it proper to refuse individuals power over their own fortune, until they arrive at a particular age, supposing that their passions and want of experience while younger, would induce them to spend it foolishly. But if this restraint be necessary in their private affairs, where interest operates as a powerful check upon their passions, how much more necessary to continue the restraint longer, against their exercising important public trusts, where interest, in place of being a check, often operates as a spur to the passions.

Even a right to elect magistrates is a great public trust, when confined to males above a certain age; as such voters act not only for themselves, but also for the females of all ages, and the males under age. But the office of a

magistrate is an incomparably greater trust. Considering the many instances of young persons, who in a few years spend their fortunes and ruin their health, from the want of experience, and from the violence of their passions, their own interest being an insufficient check to prevent them, nothing can appear more imprudent than to intrust such persons with the magistracy, or even with the right of voting. Would it not be prudent, and give greater steadiness and respectability to national deliberations, if none were allowed to hold any magistracy, or to vote for any public officer, until they were forty years of age*? Such a regu-

* Few citizens of the United States will relish this proposal to prohibit the exercise of the elective franchise till forty years of age. The author is impressed with the idea of election mobs: here are no such things—and even in Revolutionary France, we are assured there has never been an election mob; the division of a country into small districts, for elective purposes, is a complete preventive of any such inconvenience. I wish the author could have been present at one of our elections, and seen a youth for the first time numbered with freemen. The valorous knight in the age of chivalry never felt a sentiment more elevated and ennobling than does a youth on this occasion. And I am disposed to believe that the

lation would very much lessen the number of voters, without injuring the rights of any class, and would put the magistracy, the election and control of public agents, and the judging and voting on laws, into the hands of men, who, from having cooler passions, and more experience, are best qualified for such important trusts. It has been found by exact registers, that whatever number of men there are in England of twenty-one years of age and upwards, one half of them are under forty; so that if the right of voting were confined to those

youthful mind is sooner able to distinguish between *persons* worthy to be trusted, than to discuss principles of an abstract nature. And do not the laws of Britain and America recognize such an intuitive discernment in such matters? At 14 years a youth chooses the person to whom he is bound apprentice; at 14 years the law requires him to choose his guardian to be intrusted with his person and property, &c.; and at 14 years he may choose a partner for life, and the marriage is valid—And are not these choices fully more important than that of a legislator, who is to be rechosen or displaced in the short space of a year, or perhaps two or three? These observations will not indeed apply to the office of a legislator, which the author proposes to disable any person from holding till 40 years—this disqualification is a double one; it proposes to disqualify the people from electing, thereby limiting their choice, as well as preventing the individual from accepting the place. AUTHOR'S FRIEND.

who were above forty, in countries equally healthful, half of the whole number above twenty-one, and those of the strongest passions and least experience, would be prevented from crowding or disturbing the meetings.

ADMITTING the propriety of this regulation, the Roman constitution may be rendered fit for an extensive country, by adopting some such regulations as the following: Divide the nation into provinces of from thirty to sixty miles square, according as the country is populous and conveniently situated; and divide each province into districts, and make up separate lists of all the men in each district above forty years of age. Every three hundred of these, living most contiguous, to form a ward*, and to meet in a church or some other convenient place, on a certain day annually, to elect two provincial senators, and one warden or

* In this case, there would be about 4,100 persons of all ages in each ward.

judge for the ward. These three officers must be forty years of age, and resident in the ward for which they are elected, or in one that is adjoining. These ward-voters also to elect at the same time, fifteen jury-men, each forty years old, and resident in the ward. The wardens and jury-men of every forty contiguous wards in the nation to elect out of their respective provincial senators, two men to be national senators; these to continue to be also provincial senators.

The national senate, thus elected, to have the supreme direction of all the current national business, with full control over the military force and all national officers; but respecting laws, either for civil regulation or taxation, the senate, when it judges proper, may propose a law or a tax, or to engage in a war, and if no objections are made within a certain time, the laws are enacted, and the war declared, in the name of the people; silence being considered

as their consent. But if an actual majority of the ward-voters, or of the wardens and jury-men, give instructions to their respective senators to vote against any measure, they must vote accordingly; and if a majority of senators are instructed to vote against any measure, it is then dropt, as the senate is not sovereign. It is only a select committee, composed of men of the highest rank and greatest abilities, chosen by the society to manage their common concerns.

It is proper therefore that the wardens and jury-men, who are of the middle ranks, should have a negative upon laws, or engaging in war. And to prevent the lower ranks from being oppressed, it is necessary that the majority of ward-voters, which includes every rank, should also have a negative. It is equally proper that the majority of the ward-voters, or the majority of the wardens and jury-men of the nation, shall have power at any time to annul any law

enacted by the senate, the evils of which were not foreseen when it was enacted. The provincial senators and wardens, to have the same power over their province in all civil affairs, that the national senate has over the nation; the senators and wardens of each district, to have the same power over their district; and the senators, wardens, and jury-men, to have the same power in their ward. But the ward-voters in all these divisions respectively to have a negative. None of the inferior legislatures to have power to control the laws of a higher, nor a higher legislature to have any power to interfere with the affairs of a lower, except by general laws for the nation, for the province, for the district, and for the ward, by their respective legislatures; so as to leave the people at full liberty to manage their own affairs as they may think proper in their families, wards, districts, and provinces. Neither national nor provincial senates to have any power to refuse any person a seat in their assem-

blies, who produces proper credentials from his constituents*; and all disputed elections to be determined by a new election, and the right of voting, or eligibility to offices, when challenged, to be determined by the courts of the province.

The great national officers to be elected by all the senators, wardens, and jury-men of the nation annually, the votes to be taken in their respective wards or districts. These persons to elect a consul, who, as prime minister and agent of the senate, shall have the superintendence of all national affairs, correspond with the inferior magistrates, and with foreign nations, give general orders as directed by the senate, to all officers, taking care to order all necessary estimates to be laid before the senate, and every information requisite for the good of the society;

* It would be thought very improper by the princes and states of Germany, if the national diet were to pretend to judge of the legality of the means used by any of its members, to procure his election.

but have no military command. These senators, wardens, and jury-men, also to elect such a number of generals, admirals, superintendents of the revenue, masters of the ordnance, and other national officers, as the senate judge necessary. The senators, wardens, and jury-men, of each province, to elect annually one of the senators of the province, to be governor; and also to elect the colonels and majors of militia for the province. The senators, wardens, and jury-men of each district, to elect annually, one of their senators to be prefect, or governor, and also to elect the captains, lieutenants, and ensigns of militia, for their districts.

In towns of more than one ward, the senators, wardens, and jury-men, to elect one of the senators, or wardens, to be baillie of the town, or chief magistrate. To form the judicial power, the ward-voters in each province, voting in their respective wards, to elect a judge, and a public prosecutor for the province.

THE warden and two of the jury-men, chosen by lot, to determine all causes in the ward, to any amount that the parties may think proper to bring before them; the causes to be determined in these courts in the usual way of arbitration, viz. when the two jury-men agree in opinion, the matter is decided; when they disagree, the warden may decide at any point, not above the highest, or below the lowest.

ANY person may appeal to the district court, for sums above two pounds. The provincial judge, to hold a district court in each district quarterly; all the wardens and jury-men of the district to attend; a certain number of wardens, and a certain number of jury-men, to be in each jury, all chosen by lot. These juries to determine in all matters, whether of a civil or criminal nature, but appeals to be allowed to the provincial court, which is to be held twice a year, and attended by all the senators, wardens, and a certain number of jury-men,

from each ward in the province. The juries to be composed of three senators, four wardens, and six jury-men, chosen by lot after the cause comes on. Appeals may be allowed from this to any adjoining provincial court, for large sums, the persons appealing to name two courts, and the defender to choose one of them, finally to determine the cause. But in these appeals it seems to be proper, to prevent litigation, that it shall require the votes of nine or ten of the jury to reverse a sentence, and when the sentence is not reversed, the appellant to pay full costs.

Respecting the rules by which the national and provincial senates are to transact business, it may be proper to observe, that in former ages, when few princes could write, and few gentlemen could read, when printing was not known, and when there were no regular posts, it was necessary that the members of every public assembly should attend, to hear what

was proposed, with the reasons for and against, and to give their votes. But now, as men can convey their sentiments with certainty and expedition, by printing, and posts, it seems to be unnecessary for senators to follow the ancient practice, when inconvenient to themselves. A principal clerk having charge of printing the proposed laws and edicts, with the reasons for and against, and sending copies to all the senators, they may judge better than if present, and may send their votes to the clerk, who may make out and print a list of the votes, and send a copy to each senator, that they may see if their votes are properly inserted, and after returns are made, and mistakes rectified, the proposed law or edict is enacted or rejected.

It will be allowed to be desirable, that the votes of an actual majority of all the senators should be necessary, to the enacting of every law or edict, and by adopting some such method as proposed, that object may be attained

without any inconvenience, and in that case nothing would be necessary to make the senate permanent, but a regular attendance of the clerks. The senators may attend or not, as they find it convenient.

Such regulations would have a strong tendency to prevent rash votes, by lessening the dangerous effects of oratorial powers upon the senate, and would effectually put it out of the power of intriguing senators to pass laws in a thin house, which would make the resolves of the senate much respected by the people.

The consul to direct a gazette to be published regularly, of all occurrences that concern the nation, to be sent to all senators, wardens, and jury-men, and at all times to have a right to direct the principal clerk to transmit any request for an edict, or other matter, to the senators, by which means he would have

an opportunity of obtaining the directions of the senate in every emergency, without obliging the members to leave home.

It would be extremely imprudent in a society organized as we are sketching out, to put themselves in the power of the senate, by making the consent of that body necessary to the exercise of any power over their own affairs, such as enacting a new law, when judged necessary.

Any individual of the society, therefore, has liberty to propose any law, but no power to call any meeting of the people. But if an actual majority of the ward-voters approve of it, and send their votes in a regular way to the national agent, that agent must declare the law to be enacted, and a law so enacted to have the same force as if previously enacted by the senate; and laws thus enacted by a majority of the society, not to be annulled, but by the same sovereign power.

In the ward elections it seems to be necessary, for preserving peace and good neighbourhood, and for preventing improper influence, that the votes be taken by ballot, as candidates always think themselves fit for the office they set up for, and are affronted if a neighbour vote against them. It might be proper to make a law, that every person should be liable in a fine who solicits for, or promises a vote. Such a law would form a good excuse for refusing to give any promise. In these elections, as they vote by ballot, the majority of voters present at the meeting must determine the election; but it seems necessary, to prevent factious persons from troubling the society, that it shall require an actual majority of voters upon the roll, to supersede any officer. In which case, it would be unnecessary to allow any number of voters a power to call an extraordinary general meeting; as none need attend but those who are for superseding the agent. But if the majority of voters upon the roll of the electors to any of the different offices, give their votes

for superseding the agent, either personally or by writing, their respective clerks to be obliged to insert the election, and give notice to all concerned, from the consul down to the lowest agents that are elected.

When the society wishes to enact or annul a law, or to supersede a national officer, then, when one-fourth of the number of wards in the nation sends an account of majorities in their wards for the measure to the national clerk, (appointed for that purpose and for taking the votes for national officers) he is obliged to give notice of it to the whole nation; and then the other ward clerks are obliged to transmit the number that chooses to vote for the measure, to the national clerk, although a minority of their ward, which otherwise they are not to do. For although there is a minority in many wards, when these votes are added to great majorities in other wards, they may make up a majority of the whole ward-voters, or of the wardens

and jury-men in the nation. The same rule will be followed by the provinces and districts.

POPULAR elections induce candidates to exert themselves to acquire a character for talents and virtue. But officers being liable to be superseded, makes it necessary for them to support their character by a faithful discharge of their duty; consequently, a distinct, easy method of taking the votes of the society, for superseding the senators, judges, and other public agents, is of infinitely more importance than the power of electing them. The more easily the people can exercise their control, the less occasion there will be for using that power, as the public agents will be less presumptuous and dictatorial.

As it is usual to choose the generals of brigades from the colonels, and as the merits of the colonels of militia cannot be known to a

whole nation, it seems to be proper, that the senators, wardens, and jury-men, of two or more adjoining provinces, should elect the generals of brigades. And this method may be adopted for electing other public officers, whose sphere of action is local, and whose conduct can be known in the neighbourhood only; such as superintendents of dock-yards and building ships, commanders of forts, and castles, &c.; care being always taken that the number of electors be so great, as to prevent them from making it a job.

As it is necessary that the society shall prevent, with jealous care, any man, or set of men, from acquiring absolute power over their persons or property; it is necessary, for that purpose, that they should be at all times prepared to defend themselves against internal or external enemies, by being properly organized, and regularly exercised as militia, in some pru-

dent rotation, till a certain age. Perhaps some officers, and the serjeants, and corporals, should continue on pay during good behaviour.

SECTION VI.

A general View of the Sketch.

WHILE the Romans were equal in rank, and nearly equal in fortune, their senators were the properest persons for acting as jury-men, and it was equally proper to allow them a negative upon laws. But in proportion as difference of fortune increased, and particularly after the patricians acquired exclusive privileges, this judicial power of the senators, with their negative on laws, tempted them more and more to oppress the plebeians. It was to protect themselves against such oppression, that the plebeians insisted upon having tribunes, with sufficient power to oppose the tyranny of the patricians. But as the higher ranks have no power to oppress the lower by the constitution sketched out, the office of tribune was thought to be unnecessary; and for the same reason,

there seemed to be no occasion for the office of dictator, as that office was instituted as a compromise betwixt the patricians and plebeians, in a time of great danger, to enable them to repel their common enemies.

It deserves notice, however, that this office not only put a stop to civil discord during the continuance of the dictator's command, which was the sole intention of the institution; it also remedied the inconveniency which must often arise from appointing a commander in chief for a fixed period, as was the practice in Rome. It is found that many generals who appear to have great talents for command, when executing the order of a superior, are very unfit to act as commanders in chief.

And, accordingly, as the Romans elected two new commanders in chief every year, many of them were found deficient in talents for commanding an army. But when this happen-

ed in times of great danger, a dictator was nominated, which took the power from the consul, and put it into the hands of a commander of tried merit. And as there were always about forty generals to choose from, whose talents in command had been tried, this method frequently retrieved the Roman affairs, when brought to the brink of ruin by unskilful commanders. But as the sketch allows the generals to be superseded at any time, there can be no occasion for a dictator.

THE constitution sketched out, proceeds like that of Rome, upon the common principles of business; appointing no agents but as they become necessary.

IT begins with electing a warden and jury-men, magistrates that are necessary even for a very small society*. But when the society is

* In countries where there are few inhabitants, parts of a ward may elect magistrates and jury-men for themselves, and to augment the number of voters, may allow men to vote of thirty years of age, or even younger.

numerous, it becomes prudent not only to divide the people into wards, but also into districts and provinces, that the people in each ward, district, and province, may manage the business that concerns only these respective divisions, according to their own mind.

But for managing the business that concerns the wards, as parts of these larger divisions, provincial senators are elected by each ward, which completes the civil organization for a province.

As there may be few men fit for the offices of warden and senator in some wards, and many in an adjoining one, it was thought proper to allow the voters a right to choose these magistrates from any adjoining ward, as the characters of such near neighbours must be known to the poorest inhabitants. And as the senators, wardens, and jury-men, are to determine all differences, to protect every one from violence, and to manage all the common con-

cerns of the ward, it is peculiarly necessary that the lowest classes shall have equal votes with the highest in electing them. And it is evidently the interest of all the voters, that these magistrates should be men of sense and integrity.

THE magistrates of ten, fifteen, or twenty adjoining wards, according to the populousness of the country, seem to be the most proper persons to meet and adjust public matters, in which all these wards have an interest, called a district, but in which the inhabitants of other parts of the province are not concerned.

THESE magistrates also form a court of justice, with the provincial judge, where local prejudice or power must have less effect than in the ward courts; and this advantage is still more complete in the provincial court, which ends the judicial arrangement.

To obtain this end, it seems requisite, that a province shall contain several districts, but it should not be so large as to make it inconvenient for the inhabitants to attend the provincial meetings. The wardens, and jury-men of the wards, being chosen for their judgment and integrity, seem to be the most proper persons for selecting a certain number from the provincial senators, to form a national senate.

The national and provincial senators, with the wardens and jury-men, seem to be the most proper persons to choose fit men to be employed in the national and provincial offices; and it is imagined, that these men cannot, in these elections, according to the foregoing sketch, form any separate interests from that of the nation, or connive with the national senate. As the electors to each office are so numerous, and as they vote at such a distance from one another, it is supposed that they cannot form

parties to obtain the offices for their friends, or for bribes. But if, upon trial, that great evil should take place, then a greater number of jury-men may be elected in each ward, to vote for the national officers, and a greater number of wards may join in provincial elections, to increase the number of voters.

THE national senate is invested with supreme directing power, to manage the current business of the nation, to raise such military force and direct it to act, as may be judged proper. But as the senate has not the disposal of any office or contract, or of absolute power of taxation; and as its orders must be executed by the consul, and other officers elected by and dependent upon the most virtuous and best informed men of the middle ranks, the interest of the senate will coincide with the interest of the society, in executing this important trust, in checking all unnecessary expense, in preserving peace and order, and in preventing any

individual from acquiring dangerous power over the military force.

THE office of consul seems to be necessary, that one person may have the supreme management under the national senate, to correspond with the provincial governors, and with neighbouring nations, respecting public concerns; to give information to the senate respecting these matters; to direct and give orders to all public officers, according to the general directions of the senate, and to be personally answerable for the safety of the nation.

FOR these purposes it is necessary that the consul be elected by, and dependent upon the people. This first officer to have a moderate salary, and precedence of all senators, but no palace or guards. A minister of the senate and nation, ought not to expect more pay than has been usually given by prudent monarchs to their ministers. A good man will not

wish for more, and it would be highly imprudent to make the salary so high, as to tempt the selfish and ambitious to form intrigues and factions to obtain the office. Every regulation of a society should give a decided preeminence to virtue; but encouraging ostentatious show and parade, is indirectly insulting merit and virtue, when not accompanied with riches.

By the elections according to the foregoing sketch, it is to be expected that the national senators will, in general, be men of the first families, and all of them of independent fortunes. As such men, therefore, are deeply interested in the welfare of the nation, and as they are not obliged to leave home, they ought, like the Roman senators, to give their advice from patriotic motives, and disdain the idea of taking wages from their poorer neighbours; but to show respect to virtue and talents, it seems proper that they should have precedence of every person except the consul.

THE consul, and every public agent, being entirely dependent upon the ward magistrates of the nation, they will endeavour to acquire the confidence of the people, by an open, patriotic conduct, and as the business of the public agents is to execute the orders of a senate, of which the people can have no jealousy, the cordial and ready assistance of the people will be obtained whenever necessary, which will make the powers of the public agents incomparably more effectual for the preservation of peace and order, than the same powers can be under an absolute government, where the agents are suspected and hated by the people, and looked upon as robbers and tyrants.

WHERE a national senate interferes with the concerns of individuals, or even those of districts or provinces, any other way than by general laws for the whole nation, in that case, the more extensive the country is, the more oppressive and expensive will the government be. How ridiculous it must appear to see a great

national senate, gravely debating about the propriety of building a bridge over a small brook, dividing a small common, altering a road, or taking away some trifling nuisance in a village, which perhaps none, or not above one or two of the members, know any thing about!

CONSEQUENTLY, the senators must, when engaged in such matters, sink themselves in the eyes of the society, not only by being occupied about trifles, but by ridiculous acts; as they must form their judgment upon the evidence of the most partial witnesses that either party can procure.

How many thousand useful small bridges might be built, pieces of roads made, lands inclosed, and commons divided, if the people of the district, who only are concerned, had legislative power; but which cannot be done where it costs a large sum to procure the au-

thority of the national legislature in each case.

THESE evils, which are the consequence of absolute governments grasping at power, are avoided by the foregoing sketch. The far greater part of public business will be executed by the ward and district legislatures; schemes respecting large bridges, great roads, and canals, will be examined by provincial legislatures; and where two provinces are concerned, but disagree, the matter will be referred to a neighbouring province, where the case will be much better understood, than it can be in a national senate, where none but the members from the neighbourhood can be judges of the propriety of the measure. Hence the national senate will have very little business, and very seldom have occasion to meet.

WHERE a people have the prudence to adopt the Roman constitution, modified in some such

way as sketched out, for managing their common concerns, every person of common sense will see, that the different agents employed, and the powers with which they are intrusted, are necessary for the good of the society.

The low classes will see, that their persons and property are secured, by having equal votes in electing, and in superseding the judicial magistrates. At the same time, as these magistrates elect the senators and all executive officers, men of the greatest talents, virtue, and respectability, will have the whole power of directing and executing the national business, which is both proper and becoming.

Nor can the lower ranks be injured by this power of the higher, as a majority of ward voters, can annul any improper law.

This power will remove every cause of suspicion from the minds of the people of the lower classes. Nor can it be supposed, that

the votes of an actual majority of the oldest men of a nation, taken in their wards, can be obtained in a factious way to annul a good law. And such a power is absolutely necessary to prevent oppressive laws from continuing in force, if they happen to be made, either from design or mistake.

Thus, by uniting the interests of all the classes, and by uniting the interest of the senators with the interest of the society, these regulations form the surest guard against sedition and tyranny. And by the encouragement which they give to the practice of virtue, and cultivation of talents, they must have a powerful tendency to raise a society to the highest state of perfection of which human nature is capable. If the Romans had adopted some such modifications of their constitution, the inconveniences of allowing the lower ranks a vote in enacting laws and electing officers, would have been in a great degree obviated.

SECTION VII.

On the Nature and Tendency of the Powers intrusted by the National Assembly, to the Public Agents in France.

To prevent the evils which had attended absolute monarchy, the national assembly proposed, that the people should elect representatives, who should have the sole power of enacting and repealing laws, and the control of the public treasury; the king to retain the important powers of directing the current public business, the command of the military force, the disposal of public offices, and to be allowed a certain sum annually for the expense of his court. As the king agreed to these principal regulations, with others of inferior consequence, they were formed into a constitution, called a limited monarchy.

By this constitution, the representatives were invested with unlimited power to act as they might think proper, in the name of the people; their acts to be considered as the acts of the whole society. There was no reservation, nor any method pointed out, by which the people might divest these men of their power, during the period for which they were elected, in case they should betray their trust.

It is obvious, therefore, that this constitution invested the king and assembly of representatives, jointly, with the same absolute power over the nation, that the king possessed solely before the revolution; and that each of them was independent of the other in the exercise of their respective shares of that power. This division of the sovereignty, by giving the king the sole power of scheming and directing the current business of the nation, and by giving the assembly sole power over the means necessary for executing his schemes, had a direct

tendency to produce the most violent altercations and recriminations, between the king and the assembly, which could only end in civil war, unless one of them submitted to the other.

But as it could not be expected, that the majority of seven hundred representatives would submit, and implicitly agree to the schemes of a king, without some strong personal inducement, the king, to avoid contention and civil war, was obliged either to submit to the representatives, or to bribe them to consent to such taxes and laws, as might be necessary for carrying on his schemes; and it ought to have been expected that he would choose the latter method, as he had the disposal of the public offices, and the direction of the expenditure, by which means he was enabled to offer such high bribes out of the national funds, as few men could resist. For, as each member of the French assembly repre-

sented about nine thousand families, on an average, if the king desired a member to vote for taxes amounting to one pound sterling upon each family, the constituents of that member would pay, if the tax took place, nine thousand pounds a year, of which the member would pay two, three, or five pounds.

And, at the same time, if the king or his agents offered to give the member out of the produce of the tax, in money and places, five hundred pounds a year to himself and friends, few could be expected to resist such a powerful temptation, and the leaders would obtain places worth ten, twenty, and some above forty times that sum.

As the king, in such a government, must bribe a majority in the national assembly, to obtain their concurrence with his schemes, it is therefore his interest to increase the number of offices, and to allow the officers to increase

their own emoluments. For as places increase in number and value, being all in his gift, his influence in the assembly must increase in proportion. Such increase of places and perquisites will be equally beneficial to the representatives, as they will obtain a larger share. Hence new offices, new perquisites, and new methods of embezzling, may be expected to be constantly increasing, until the influence of the king be so great, that he may depend upon the concurrence of the assembly in any measure he may propose.

THE waste of money by such peculation and extravagant management, will make it necessary to levy many heavy and oppressive taxes. The assembly in this case, to secure themselves against a discontented people, provoked by their robberies, will be induced gradually to augment the army, and to pass laws of the most oppressive nature, under pretence, that such measures are necessary to curb seditious spi-

rits, and to preserve peace and order in the society. The effect of which will be, that the king will have as much power over the persons of the people as he had before the revolution, which power will tempt some bold ambitious king, to annihilate the assembly altogether.

For as the king's influence in that council is obtained by allowing the members a considerable share of the money taken from the people, and as much of it must be given to persons who are disagreeable to him, it is natural for him to wish to be relieved from the constraint of such costly coadjutors, that he may apply the whole revenue to his own use, and employ such ministers and officers only as he pleases. Nor could the assembly, upon such an attempt of the king, expect support from any part of the nation, except their own friends.

The army, with the numerous place-men and their friends, would for their own interest

support the king. And as the assembly had, in such supposed case, betrayed its trust, it could not be expected that the people would risk their persons or property to support an establishment, in the effects of which they had been so much disappointed, whose experience had shown them their extreme folly in having supposed that a national assembly would be a check upon the king, when its leading members were his ministers, and a great majority possessed places, pensions, or contracts, given by him. So that this limited monarchy seems to have a direct tendency, when fully established, to produce the most extravagant waste and peculation, to end in the absolute dominion of one person, and to approach that end with an accelerating motion.

These depredations and oppressive laws cannot be prevented by the feeble check of the constituents having a power to displace the representatives, at stated periods. As rulers

are never at a loss for plausible pretences to justify the most tyrannical law, the representatives will aver, that they acted right to the best of their judgment, and upon trial it will be found, that changing representatives will seldom be of much advantage. The temptations to which they are exposed, by possessing absolute power over the property of the nation, are too strong for human nature.

It has been observed, that dividing the sovereign power between the king and the national assembly, would necessarily produce civil war, unless one of them submitted to the other. But their situation was such in France, as to preclude every rational hope that either would submit.

And, accordingly, after many convulsive struggles, the office of king was finally abolished, and the people elected representatives who were to form a republican constitution; and in

the mean time, to have the sole management of public business. These representatives met, and took the name of the National Convention.

THE whole power being now vested in the hands of plain men (hitherto zealous in the cause of liberty) under the equivocal character of representatives of the people, the king was dethroned, and his insolent, tyrannical court annihilated, which had so cruelly oppressed the people.

ALL parties seem to have concluded, that equality of rights, with the actual sovereignty of the people, were now fully established. But though the people chose these men, they had not the smallest power over them. The members of the convention were, in fact, joint sovereigns with absolute power, having not only the same legislative power as the former assembly, but also the sole direction of national affairs, the command of the military force, and

the disposal of all national offices, powers which were formerly intrusted to the king.

If the members of this convention had taken the name of joint kings, which would have conveyed a just idea of their power, few persons would have been surprised at the sanguinary struggles which followed.

No person of common sense could suppose, that seven hundred kings would agree in dividing the numerous lucrative offices, and the great funds which were at their disposal, or that the tyranny of seven hundred kings, where none were individually responsible, would be less oppressive to the people than the tyranny of one, who alone was responsible. It is not the name of king—it is unlimited power, which tempts rulers to rob and oppress their subjects.

The sanguinary struggles for power among the members of the convention, and the bloody

tyranny which they exercised over the nation, showed in a strong light, that absolute power, when in the hands of plain men, even though formerly patriots, produces as fatal consequences, as when it is in the hands of a king, or a set of nobles.

This infamous assembly, from a fear of insurrection, were obliged to give up their power; but they previously formed a constitution, which was called republican.

By this constitution, the representatives were invested with the same power as by the constitution of the limited monarchy. The same power too that was by that constitution intrusted to the king, was by this vested in an executive council of twenty-four men, twelve of whom were to be chosen annually by the assembly of representatives.

It is evident, that the division of the sovereign power in this constitution, had the same

tendency to produce altercation and recrimination, as in that of the limited monarchy; to which were added, the violent animosities which were necessarily produced by struggles for power and emoluments, in the executive council, uncontrolled by individual responsibility. Besides, as the members of the executive council and the representatives were as strongly tempted to increase the number of places and perquisites, as the members of the limited monarchy, this government had the same tendency to waste and peculation.

Hence, by vesting the executive power in twenty-four men, instead of one, the government was necessarily much more turbulent; equally, if not more expensive, and not less absolute, than the limited monarchy. The people had no more control over the members during the period of their power, than over the king before the revolution; and even when that period expired, the only remedy they had was a power to choose new masters.

To obviate the turbulent tendency of this government, a new arrangement of the members was formed. The number of the executive council was reduced to five, to be chosen by the assembly of representatives, and called directors: one of them to go out of office every year; so that the office was for five years. This directory was to be entirely independent of the people, and the representatives were to retain the same powers as formerly, but to be divided into two councils.

By lessening the number of the executive council, it was less liable to rancorous struggles for power; but by dividing the representatives into two councils, each to have a negative upon the other, the executive council must obtain the concurrence of both to every measure, which enlarged the sphere for intrigue in the councils; so that the government had less energy than before this alteration.

And as this government had the same abso-

lute power as the former; the members were equally tempted to rob and oppress the people.

Too little attention having been paid to secure a majority in the councils, they refused to grant the supplies which were demanded by the directory, for executing its schemes. Upon which refusal, instead of either yielding to the councils, or bribing a majority, (one of which ways such a constitution renders necessary,) the directory banished the leading members who opposed the supplies, without allowing them even the appearance of a trial.

These arbitrary acts destroyed all confidence in the present government; and as all the new governments had been in the highest degree tyrannical, the people's opinion of the representative system was greatly lessened. This change of opinion, the bad conduct of public affairs, the waste of public funds, and the danger of invasion, made the people desperate and mutinous. And the country continued in this

situation until Bonaparte, the most successful of the French generals, arrived from Egypt. With his assistance, the leading members of the councils formed and established a new constitution.

They gave that great general, under the name of consul, the same power for five years, as was given to the king by the constitution of the limited monarchy. They appointed a small legislative council, and another council called a tribunate, which had a negative upon the former. They also appointed a small senate, the office of which seems to have been purely electoral.

The senators were to elect the consuls at stated periods; also the members of the two councils; and when any of their own members died, the senate supplied the vacancy. The consul, with the two councils, to possess sovereign power; so that the persons and property of the

French nation were, by that constitution, at the disposal of a certain number of men, chosen by a junto, called a Senate.

The people had no control whatever over these rulers; they had not even as formerly, at stated periods, a choice of masters.

The division of the sovereign power between the consul and the councils, had the same tendency to bribery as the limited monarchy; but there were much fewer members to be bribed, and as these few, from the mode of their appointment, could not expect to be supported by the people, their power would be trifling, very little more than that of the parliaments under the old monarchy. Consequently, the consul had as much power as the former absolute kings, without being checked in levying taxes by the exclusive rights of the nobles and clergy, and was equally tempted to squander the people's money in ostentatious show, and in ruinous schemes of ambition.

FROM these observations it appears, that all these different governments were, with respect to the people, equally absolute, though composed of different numbers of men, and differently organized; and that they were equally tempted to rob and oppress the people, by the unlimited power which they all had of taking money from the people by taxes, and appropriating it to their own use. But as the members of these new governments did not claim a personal right to their power, like absolute monarchs, their pretences for enlarging their powers, and for levying taxes, were different.

ABSOLUTE kings assert, that they have a right, as vice-gerents of God, to make laws, and to levy such taxes as they may judge necessary, and that they are accountable to God only for their conduct.

BUT the members of the new governments denied that kings have any such power, as-

serting that the people were sovereign over their own affairs, and that they acted as agents for, and as representing, the people.

HENCE, to preserve some appearance of being agents and not sovereigns, and at the same time to extend their power as much as possible, and to derive every advantage from it, the rulers in such governments are obliged to use every art to deceive the people.

THEY must give their principal constituents a share of the public offices, and to serve these persons and themselves, they will artfully make the taxes fall upon the lower ranks, and will extend the power of the rich over the industrious by oppressive and humiliating laws. Such rulers are also tempted to grasp at every pretence for augmenting the army and navy, for increasing the number of fortifications, and other public buildings, not only for their own security, and an ostentatious display of power,

but likewise, as the increase of expenditure increases the number of offices and contracts at their disposal. But the money that can be obtained by the most refined deceit in time of peace, is trifling, when compared with what can be secreted with ease in time of war, as that dreadful scourge of mankind furnishes a plausible pretence for borrowing and taking enormous sums from the people, one half or three fourths of which can be appropriated to the use of the rulers, by commissions, places, pensions, contracts, and manufactured accounts of the expenditure. Besides these very great advantages, which are the immediate attendants on war, there are many not inconsiderable, that follow as consequences. It occasions a great increase of business in all the public offices, with a proportional addition of officers and clerks, many of whom, being dependants of the rulers, are kept in pay after the war is over, though quite unnecessary; all the military officers are retained upon full or

half-pay; the interest of the debt also, and if possible a part of the principal, must be paid yearly. To answer all these purposes, the exorbitant taxes must be continued, the collecting of which require many officers, and both receiving and paying the money, furnishes a percentage, and an opportunitiy for embezzling; so that the rulers and their friends have, by these various means, very comfortable provisions after peace takes place, and may wait with some degree of patience, until another war commences.

Hence, as the members of all the governments in France which we have examined, were exposed to these irresistible temptations, it ought to have been expected that they would use every art to involve the nation in war, at least so long as money could be raised to pay the interest of the debt, and the numerous salaries and pensions.

MEN vested with such unlimited power and trust, and having such opportunities of embezzling large sums with impunity, must be much more than commonly honest, if they do not gradually become hardened thieves.

WE ought to expect to see the greatest number of them callous to every benevolent feeling—to see men of great estates, with the most consummate impudence, taking large sums from the public purse to support their own vicious extravagance, and to bestow upon idle relations and favourites, without the least compunction, though conscious that these sums have been levied by their orders, from people of business, from hard-wrought labourers, from the poor, and from the miserable, by taxes upon their wearing apparel and other necessaries, and even upon salt; an article which is used in greatest quantities by the poorest people, to preserve their coarse animal food from total putrefaction.

AND these people are oppressed with taxes, under the stale and mean pretence of state necessity; which necessity, when it does exist, is, with few exceptions, owing to the robberies of the rulers, to extravagant public establishments, to their involving the nation in unnecessary wars, and to their baseness in laying the burden of taxes upon the lower ranks*.

BUT these evils, which all these forms of government must produce, though great in themselves, appear trifling, when compared with the evils which are produced by these rulers having the sole power of appointing national officers, and the disposal of national contracts.

* In Britain salt pays a tax of three hundred per cent. while livery servants and pleasure horses pay only a tax of three or four per cent. And a printed gown of eighteen pence value per yard, pays four pence a yard, while muslins of two or three pound a yard, and precious stones, pay no tax. And in America, the rulers in 1789, taxed salt at about ten per cent. and carriages imported fifteen per cent.; but the year following, upon pretence of state necessity, they doubled the tax on salt, but they only raised the carriages from fifteen to fifteen and a half per cent.

For, when national offices and contracts are at the disposal of a few men, they become prizes for the encouragement of vice, as every person who aspires at a public office, or who wishes to obtain a contract, must cultivate the talents that are necessary to make him acceptable to the men of power. He must in a particular manner practise the mean and debasing arts of dissimulation and flattery, to court not only these men, but all who are supposed to be their favourites, however despicable their character.

Besides, as the rulers in such governments will, in general, live in great state, making an ostentatious display of their riches and power, the people of high rank will imitate them, and court their company and favour, to obtain places and influence; and the people of every inferior rank will court their superiors, and endeavour to associate with as high company as possible, not only to appear of consequence, but

because people of the highest rank will, in general, have the greatest influence in procuring places. Hence every person will be tempted to dress and live to the utmost extent of his income, and many will live far above their income.

Under such governments, it cannot be expected that the judges will decide according to justice, against the rulers or men of influence, who can so essentially injure or serve them. Consequently, the courts of law, instead of protecting the people, will be powerful engines for oppressing them.

But if the judges and the most independent families are induced by selfish views to adopt these despicable means of acquiring the favour of men in power, it must be expected that these base practices will be carried to a great extreme by the dependant classes, which are liable to be oppressed by all the higher ranks,

and also by the low satellites of power, to whom alone they must look for assistance, to procure for them some of the numerous contracts or jobs, clerkships, or inferior offices, to obtain whose interest they must not hesitate at any means, however vicious.

By the habitual practice of such vices, and being kept in countenance by numbers, the people of every rank, under such governments, gradually lose all regard for virtue, which they find to be, in so many situations, an insurmountable barrier to advancement and gain.

Besides, as such rulers support any appearance which they may affect, of regard to the public good, by deceit and misrepresentation, and as they wish to keep their embezzlements secret, a man of strict honesty, however great his abilities, is totally unfit for their service.

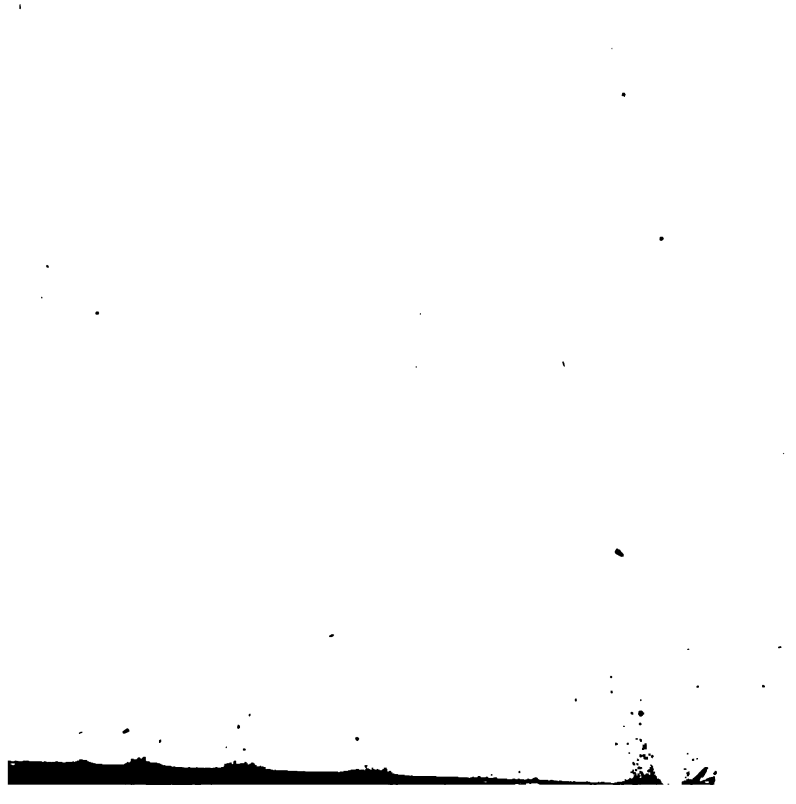
Thus, the vilest customs of a court prevail through every rank, from the highest to the

lowest, polluting the whole society; diffusing a general taste for servile manners and ostentatious show; making strict integrity to be viewed with contempt; bankruptcies more and more frequent, and the very name of patriot laughed at.

These evils seem to be the necessary consequences of intrusting the rulers with absolute power over the persons and property of the society, and with the disposal of the public offices, as such power exposes them to temptations which are by far too strong for human nature.

As all these constitutions, therefore, gave the rulers these powers, though the governments were composed of different numbers of men, it ought to have been expected that they would produce similar effects, though in different ways. The absolute monarch robs the people openly, and disposes of the money as he pleases, without pretending to give any account; and

the representatives pick the pockets of the people by fraud and cunning, under the name of necessary taxes, and divide the spoil among their families and friends, under the names of places, perquisites, pensions, and contracts.



SECTION VIII.

On the Conduct of the French Legislators.

THAT the French nation, which had sacrificed much, and risked their all, to abolish absolute power, which had been found to be invariably productive of tyranny and oppression when in the hands of a king, should intrust the same power to a king, and a set of men called representatives, jointly, is very surprising. And it is still more surprising, that the representatives, when forming the constitution, should make themselves dependent upon the king for their share of that power, by giving him the sole command of the military force.

WHEN a landlord agrees with a tenant for a house or land, the terms are generally put into writing, not only to assist the memory, but also to prevent either party from declining to perform what they promised. But the writing cannot be effectual for the latter purpose, un-

less there is a court of law, or some impartial umpire to appeal to, that can oblige the parties to fulfil their engagements.

In like manner, a constitution is nothing else than writing the articles of agreement, made by or for a society, for arranging agents and adjusting their powers, for the management of the national business.

But the powers which the constitution vests in the different public agents can be of no use, unless supported by a military force of some kind, under the direction of an impartial umpire, that can oblige every one to submit to these national regulations.

And such a force is also necessary for protecting the society from external violence. It is therefore the most material part of the duty of legislators, to organize a force in a proper manner for these purposes; to put it, like the

Romans, under the direction of such persons as are most likely to use it impartially, and with effect, and who are least likely to be tempted to use it for their own advantage, against the peace or liberty of the society.

But the French legislators seem to have been altogether inattentive to the laws of prudence in this most momentous part of their constitution. They intrusted the king, not only with the direction and command of the whole military force, but also with the disposal of all commissions, which greatly increased his power over that force.

Hence the king, if the constitution had been fully established, would have been effectually secured in his very large share of the sovereign power. But if he should encroach upon the rights of the representatives, these men had no power themselves, nor was there any umpire appointed, to whom they might apply for assistance, to compel the king to keep within

the boundaries of the constitution. Or if the king and representatives connived with each other, in oppressing the people, there was no umpire to whom they might appeal. The representatives, therefore, in the one case, and the people in the other, must either submit, or engage in a civil war against the whole disciplined troops of the nation.

Nothing could be more imprudent, than to trust the whole military force, organized for such purposes, in such hands; as it totally destroyed the use of the deed of agreement, called a constitution, and rendered the bustle about rights to elect senators a mere farce.

In place of checking tyranny, and enforcing the regulations of the society, it seems to have been calculated for the sole purpose of raising the possessors to absolute power.

The French representatives, however, were so imprudent, as to allow the king this dan-

gerous power; and they took to themselves and successors in office, a power over their constituents, equally dangerous.

TREATING the people as children, they took to themselves the power of tutors over their persons and property; and by sophistical reasoning, prevailed upon the people to acquiesce in that degrading and ruinous measure.

MR. Christie, in his Letters on the French Revolution, says, that after much debate in the National Assembly, it was determined, that "It is improper for constituents to give in- "structions to their representatives, or for "these to obey them; that they ought to con- "sider themselves not as representatives of "particular departments, but as representa- "tives of the whole society; and that they are "only to have in view the general welfare, and "not the particular interest of the department "that elected them."

PLAUSIBLE as this reasoning is, it is fallacious in the extreme, resting upon two false suppositions: one is, that the representatives will be free from selfishness, and will certainly perform their duty, however strongly they may be tempted to swerve from it, which cannot, in general, be expected; the other is, that constituents will certainly give partial instructions against the general good, which never can be the case with the majority. For, admitting that several departments may, in some instances from selfish motives, or unreasonable prejudices, give instructions against regulations formed for the general welfare, still if the measure is for the advantage of the nation, it must be for the advantage of the majority of departments, and therefore the majority will, under that idea, give instructions for the measure, and carry it. Hence it is plain, that if the representatives are under the full control of the people, no law can be enacted, that is supposed to be against the interest of the majority of the

society. But if the representatives are independent of the society, with absolute legislative power, then the persons and property of the people are at their disposal; and from the known selfishness of man, it ought to be expected, that the interests of the people will be sacrificed to the interests of the representatives. The evils which may be occasioned by the people's mistaking their interest now and then, must be very trifling, when compared with the constant tyranny of absolute representatives, who are also liable to err.

As the potentates of Europe, from observing the bad consequences of delegating great power to agents for periods of time, have adopted different methods for guarding against such effects, it might have been expected, that when the French legislators were adjusting the powers to be delegated by the people to their agents, for the management of public business, they would have paid great attention to the

practice of kings in these matters, and have adopted the methods which the most prudent kings had approved of, for preventing their agents from assuming independency. If these legislators had acted with this common degree of prudence, they must have observed, that all the sovereigns of Europe had given up the practice of making any office hereditary, or giving independent power to any agent; such power having been found incompatible with their sovereignty, or with the peace of society, and that now they appoint no agent for a fixed period, but only during pleasure. If they did observe this, it is amazing that they should have advised their countrymen, to give almost unbounded power to one, and independent power to all their agents, as they must have known that an agent of a community can with much greater ease assume dominion over his employers, than an agent of a king; and that such power was not necessary for managing public business. The superior knowledge of the

agents in state affairs, cannot be seriously urged as a reason for giving them such dangerous power. For if that reason were valid, the people ought to have no control over the men whom they employ to draw up deeds and settlements, to plan, or build, or repair houses, and to contrive and execute machinery, as the knowledge of these men in their several professions is confessedly much superior to that of their employers; yet it would appear truly ridiculous if the people were, on that account, obliged to choose certain of these professional men, who should have full power, during a certain number of years, to execute the business of their employers, when, and how, and at what rate, they might think proper.

MEN of great fortunes in land are likewise, in general, as ignorant of country affairs, and the management of their estates, as the people of the different ranks of society are supposed to be of their public interests; yet such

men of fortune would think it a pernicious law, that should compel them to trust the management of their estates to certain men for several years, with unlimited power during that period, upon account of their superior knowledge in these matters.

Let us suppose that there were such a law, enacting, that men of fortune should have no power over their stewards, except a liberty of choosing another at the end of a term of years, and that each steward should have the out-laying of all the money for the estate, with perquisites and per centage, in proportion to the sums paid or received. In such a case, it would be their interest to contrive the most expensive schemes for the per centage and perquisites; and if the stewards had also power to appoint to all offices, and to erect new ones as they judged necessary, in that case, when a son, a brother, or a favourite of the steward's, was to be provided for, new offices with consider-

able salaries would be found necessary for the good of the estate.

If the stewards were to meet and form a convention, and if such convention had power not only to direct the application of the rents, but also to borrow money upon the estates, the proprietors might expect to see them deeply mortgaged. If the convention had also power of determining the wages of the stewards, the per centage they were to charge, and the sole power of passing their accounts, in that case it might be expected, that the stewards would be allowed good wages, a handsome per centage, and that their accounts would not be scrutinized very severely. The owners of the estates might have reason to complain of the extravagance of the stewards; but the stewards would boldly aver, that every measure was for the good of the estates, the true interest of which they understood much better than the proprietors; and, therefore, their

ill-judged clamours must not be regarded. And a proprietor would find, that changing the steward would be of very little advantage, as a new one would be tempted, by his present interest and passions, to use the same freedom with the estate. The owners therefore must submit. If we suppose that such a law was made by a convention of stewards, would the proprietors like to be told by them, as a reason for making the law, "That it was pro-
"per to be careful in the choice of their stew-
"ards, but let them repose full confidence in
"them when chosen. A man does not cease
"to be a rational being when he becomes a
"steward; he has still an understanding, a
"judgment, a conscience of his own, and to
"expect him to subject his faculties passively
"to the will of others, is to expect him to act
"both irrationally and immorally: It is to de-
"grade him from the dignity of rational na-
"ture, and make him a speaking trumpet to
"convey the orders of his constituents."

RIDICULOUS and insolent as such language appears, when viewed in this light, yet according to Mr. Christie's letters, page 199, this was the language used; and these insolent sentiments were adopted by the French representatives when determining what powers they ought to take to themselves and their successors in office. These representatives were actually stewards, each chosen by the people of his department to manage their common concerns, in which his own was included. They had no more occasion for absolute power over the persons and property of the people, than a steward to a man of fortune has for such power over his person and estate.

SECTION IX.

Absolute Power is not the less pernicious, that it emanates from the Society.

NATIONS are called free, if the powers of the rulers emanate, or have originally emanated from the people. But that is not a necessary consequence. Many individuals have sold themselves for slaves, and nations may do the same, or they may, without intending it, give such imprudent powers to their rulers, as must make themselves slaves.

THE emperor Charles the Fifth thought proper to give up both his sovereignty and property to his son Philip, reserving only a small annuity; but after that deed, not one of his numerous subjects, who had obeyed him implicitly for many years, ever considered him as their sovereign, and he soon found that he had not power to enforce the payment of his an-

nuity. By giving his son the sovereign power, with the command of the national force, there was no umpire to appeal to, who could compel his son to do him justice; consequently, he was obliged to take such treatment as his son chose to give him.

HENCE, it seems to be a great mistake to suppose, that a people are sovereign after they have given absolute power to a number of men over their persons and property, with the command of the military force.

THESE men are made by that power, the actual sovereigns, and the people must pay such taxes, and submit to such laws, as these men may think proper to impose.

THE people are in fact their slaves, of that kind called subjects. For, as the emperor could not give his son absolute power, without denuding himself, and by that act coming under the absolute power of his son, consequent-

ly becoming his slave; so a people, by giving absolute power to a number of men over themselves, with a military force to support such power, necessarily give up their own liberty, and become slaves.

To suppose that the people have still rights which they can rely upon, and that these absolute rulers must regulate their conduct by the constitution when there is no umpire that can oblige them to adhere to any rule, must be a deception; for it is plain, that the people's rights are of the same nature as the emperor's right to his annuity, and the people, like him, must take such usage as the rulers think proper to give them. There is no alternative but an appeal to a ruinous civil war.

It also follows, that where the sovereign power is exclusively possessed by the higher ranks of the society, the lower, in that case, are slaves to the classes that have the sovereignty, and may expect to be oppressed with taxes,

with humiliating laws, to gratify the avarice and pride of the high ranks.

This tyranny, which is inseparable from power over the persons and property of others, produces a settled rancour and jealousy between those classes that have the power, and those over whom it is exercised, which necessarily tends to breed sedition and civil war, not only by these galling provocations, but such a situation makes actually the interest of the oppressed classes, to endeavour to raise one person to absolute dominion over the whole society; as that will not only humble their imperious neighbours, and break their galling yoke, but will also have a strong tendency to equalize the taxes, as an absolute monarch has in general no desire to favour the higher ranks by the mode of taxation, far less to extend their power over the lower by humiliating laws; on the contrary, he eyes men of high rank with a constant jealousy.

SECTION X.

Equality of Rights, as advantageous to the highest Ranks as to the lowest.

THE different constitutions, which the American and the French legislators formed for their respective nations, for the preservation of order and public liberty, against anarchy and despotism, were, in essential regulations, exactly similar.

CERTAIN numbers of men, differently divided, were, by all of them, intrusted with absolute power over the persons and property of the society. But if sufficient attention had been paid to the consequences, no hope could have been entertained, that intrusting absolute power in the hands of a number of men, would alleviate the evils which that power had always produced, when in the hands of one.

It seems to be owing to a full conviction that kings in general will oppress their subjects to gratify their selfish passions, if intrusted with absolute power, that the friends of mankind, in such unqualified terms, reprobate an absolute monarchy, and have shown such an anxious desire to form checks upon such a power.

But certainly there is as much reason to suspect the selfishness of the men who are to be the check upon the monarch, and of the men who are jointly intrusted with absolute power in governments called Republican, unless we suppose that absolute kings only are ambitious and selfish.

But as no person of common sense can suppose this to be the case, there is no reason for expecting any advantage from taking a part of the power from the king, and intrusting it with one or more councils, whose interest it is

to connive with the king, or from intrusting the whole power to a number of men without a king.

In governments in which the sovereign power is divided among a number of councils, whether with or without a king, it is thought to be essentially requisite, that each part of the government shall be so constituted as to be able to preserve its share of power, it being expected that each part will endeavour to extend its power, which, if effected, must necessarily lessen the power of some other part, and destroy the equilibrium and harmony of the whole.

But although the power of each of the parts of the government could be so balanced, as that all of them could preserve their respective shares; still the same passions which tempt the parts of the government to encroach upon one another, must operate and tempt the

whole to connive, to extend their joint power over their subjects, and to increase the revenue, that each part may obtain a larger share of power and emoluments ; these men being under the same temptations to oppress their subjects, as an absolute king.

HENCE, it seems to be obvious, that dividing absolute power among a number of men, and dividing these men into a number of councils, with or without a king, can have no effect in checking the passions of these men for taking money from their subjects, or in protecting subjects from the effects of these passions.

THAT this is the case, appears in a strong light when we contemplate the conduct of the American government, and compare the increase of its establishments, and its advance to power, with the advance of the different monarchies in Europe, from similar small beginnings, to their present immense establishments, and consequent despotic power.

As America had been lately peopled, and was far from being populous at the time of the revolution, the former rulers had not had opportunities or pretences, for forming any considerable civil or military establishments.

And as the new government was formed after a violent contest for independency, which had greatly impoverished the people, and had roused a strong jealousy of the encroaching nature of power, it might have been expected that a long series of years would have been allowed to pass, before the rulers would have ventured to show a desire to exert their power, in an improper manner, over such a people.

Yet the revolution was scarcely completed, when plans were formed for advancing the power, and for increasing the emoluments of the rulers. They began with enacting laws of excise, which, besides increasing places and other emoluments, enable the rulers to fa-

vour their friends, and to oppress those who oppose the extension of their power; and as the provincial courts were not under the control of congress, national civil courts, under plausible pretences, were formed, entirely dependent upon congress to enforce its laws. But the rulers saw that a military force was the only sure foundation upon which to build the fabric of their power, and accordingly, the most sophistical reasoning was used, to show the necessity of having an army, and upon various pretences a small army, as a beginning, was raised.

It has been observed, that where the rulers have the command of a sufficient military force, whatever restrictions the constitution may lay them under, the people must submit to such treatment as the rulers choose to give them.

The restrictions are, under plausible pretences, explained away, and one arbitrary act

forms a precedent for others, until every idea of restriction is laid aside as improper. But we may also observe, that where the rulers have only a small army, where the people, trained to arms, are the principal military force, the rulers dare not tyrannize over their subjects, however unlimited their legal power may be, not having sufficient military power to enforce submission.

If the rulers in America, therefore, have exerted themselves with so much effect, to extend their power, and to increase their emoluments, in their present situation; what may be expected from such a government, when supported by a large military force, and by numerous bands of place-men and their friends?

The check which the disinterestedness of Mr. Jefferson has given to the increase of establishments, can only be temporary. The rulers being intrusted with the disposal of all offices, must irresistibly tempt the majority of

them, to strain every nerve to increase establishments which increase their own power and emoluments; and the greater the establishments are, the greater the number and power of those whose interest it is to oppose the election of disinterested presidents or senators.

The American constitution allows any number of the society to signify their disapprobation of any measure of their agents, by petition; but does not oblige the agents to pay any regard to such petitions, although signed by a great majority.

It seems to be a very imprudent regulation, to allow a small number of the society a legal right to find fault with the measures of public agents, yet to allow the agents to persist in measures that are objected to by a great majority of the society. Such a regulation has a direct tendency to generate sedition, as it furnishes demagogues with a legal right to oppose

the measures of government; and as no method is pointed out for ascertaining a majority, demagogues may assert, that the majority are of their opinion, when supported by a few of their friends only, and by that means raise tumults and seditions; and these partial oppositions furnish government, on the other hand, with a plausible pretence for disregarding the most unanimous opposition of the society, by representing it as a seditious opposition of demagogues.

This vague and insulting right, of *allowing a people to petition their own agents*, seems, however, to be of considerable importance in the present state of America; but it cannot be of any value after the government has formed large civil and military establishments. And the advantage derived from this right, even in the present state of America, can only be obtained by a mobbish clamour and noise; as it is not a right to control the public agents, but only a right to threaten them with opposition and rebellion, if they persist in obnoxious mea-

sures. This mobbish method of opposing tyrannical measures, being very disagreeable to many disinterested persons, they are at a loss to determine how far the power of government ought to be allowed to go, in checking meetings of the people, which tend to produce animosities and tumults.

As the want of an army has deterred the rulers from acting tyrannically, and as the altercations betwixt the parties, for and against the extension of the power of government, heightened by the intrigues of demagogues, are frequently producing disturbance, it is probable that the Americans, to relieve themselves from their present evils, which are comparatively trifling, will allow their government to form such establishments, as will make its power as irresistible as that of the most despotic monarchies. And then they may expect to be treated in the same tyrannical manner, as the subjects of despots; then the intrigues of the members of the government, and the violence

of their struggles for power, will be in proportion to the number and value of the offices and contracts, and to the greatness of the funds, which are at their disposal, as has been lately exemplified in a terrible manner in France.

The inhabitants of Athens and other Grecian cities, having seen and felt the misery which is the certain consequence of intrusting the managers of public business with absolute power, whether they consist of a greater or lesser number, determined not only to retain the sovereign power in their own hands, which was proper, but unfortunately they went to the other extreme, and determined not to appoint any managers. The whole society convened in a body, directed all national affairs, determined the number of men and ships that were to be employed by the society, whether for defence or offence, gave orders to commanders, and ordered all the requisite articles for the armies and fleets.

This very imprudent method of transacting national business, was necessarily the cause of much confusion, of imprudent management, and of fluctuating schemes, and it furnished great opportunities to ambitious demagogues to mislead the people, and to raise themselves to absolute power.

As the Athenians saw the necessity of appointing commanders for conducting their armies and fleets, it is surprising that they did not see, that it was equally necessary to appoint a committee for managing national business, and controlling the military commanders. The Romans, by appointing a committee to manage the current public business, and retaining the sovereign power, with the nomination of executive officers, avoided equally the tyranny of absolute managers, and the confusion which must take place where there are no managers. And it appears from the Roman history, that when proper arrangements for the management

of public business are adopted, the possession of equal rights by all the people, which is absolutely necessary to prevent oppression, has no tendency to induce the lower ranks to assume the management of public affairs, as has been erroneously supposed. The lower classes in Rome, though they had equal votes with the higher in enacting laws, from the building of that city, (except about 75 years, when the laws were made by the tyrant Tarquin, or by votes taken by centuries) yet they never interfered with the senate in the direction of matters of state, previous to the murder of the Gracchi. And after that event, it was not these classes that dictated to the senate in these affairs; it was rich individuals with armed retainers, that dictated to both senate and people.

THE barons of Europe, in a later period, with their numerous armed vassals and retainers, controlled the legal power, and kept their several countries in continual alarm; committing robberies and murders with impunity.

But as no person can suppose, that these acts of violence were produced by the lower classes taking advantage of their numbers and associating together to rob the rich; neither is there any ground for imputing the tumults that happened in Rome, after the murder of the Gracchi, to the circumstance of the lower classes having votes in making laws.

As the intention of electing magistrates is for general protection, that they may distribute justice equally to the whole society, they must, to accomplish that end, have sufficient power to enforce their sentence against persons of every rank. But where individuals are allowed to keep as many armed men as they think proper, and where they do support numerous bodies, like the rich men in Rome, and the European barons, as the magistrates have not, in that case, power over these men, the intention of electing them is defeated, and the social tie broken.

EVERY man will then attach himself to such leader as he thinks most able to protect him; by that means increasing the power of the powerful, which directly tends to raise one person to absolute dominion, and consequently to make all the other powerful men, as well as the poorest, slaves to that one.

IT also follows, that if the low classes are excluded from electing the magistrates, the intention of such an institution is defeated, and the social tie broken, with respect to them, as in that case they have no legal protectors.

THEY are in the power of magistrates appointed by their richer neighbours, and may expect to be much oppressed. To preclude the low classes from electing protectors, who need them most, is great injustice; but to invest all men of the higher ranks with magistracy, by that means increasing their natural pride, and arming them with legal power to

oppress their poorer neighbours, is the height of injustice and tyranny.

DURING the first 210 years of the Roman republic, every Roman had an equal vote in making laws and electing magistrates, and was equally eligible to offices, as common sense points out to a people, associating together for mutual advantages. The method of taking the votes, and paying taxes by centuries, seems to have been proposed by Servius Tullius, to lessen the confusion at elections (the number of voters being at that time above 80,000) and also to relieve the poor from taxes, which relief made them agree to the proposal.

BUT they soon found, that they were by that means left quite defenceless; and as the rich, by this new method of voting, possessed the sovereign power, they, at the expulsion of Tarquin, not only excluded the plebeians from the high offices, though there was no restriction

formerly even in electing kings; they also oppressed them more and more by their judicial power, allowing exorbitant interest to be demanded, even 20 per cent. for a month*; so that in 15 years after the expulsion of Tarquin, the plebeians, being determined not to be slaves, were forced to defend themselves with arms; and they obliged the patricians to lower the interest of money, and to allow them to choose protectors of their own class, whom they called tribunes.

The mode of voting by centuries, which was intended to prevent confusion and public commotion, (by increasing the pride and arrogance of the rich) had a contrary effect, and produced such frequent and such violent tumults, that both the property and the liberty of the society were in continual hazard. Nor

* In Rome the senators were in general lenders of money, and supported with keenness the rights of lenders, to demand such interest as they might think proper. In modern times, senators are in general borrowers, and high interest is prohibited under the severest penalties.

had the society any settled internal peace, until all the exclusive privileges of the rich were yielded up.

It is evident, from the history, that these insulting and oppressive privileges, which the patricians acquired by the new method of voting, and which they took to themselves at the expulsion of Tarquin, were the causes of these tumults, as there were none of any consequence, (except the secession of the poor to mount Janiculum) after they were finally given up, in the 385th year of Rome, until the murder of Tiberius Gracchus, a period of 235 years. Nor were there any civil commotions during the time of the kings, when all the classes had equal rights, and no distinction made of patrician or plebeian, either in electing the kings, or in arranging the centuries.

During this period of 230 years, before the usurpation of Tarquin, and during the 235 years after the usurped rights of the higher

classes were given up, until the murder of the Gracchi, the lower ranks never attempted, though superior in number, to enact laws to oppress the rich, or to endanger their property, or to appoint unqualified low men to the public offices. During both these periods, the persons and property of individuals of every class were safe, particularly those of the higher ranks, and every one possessed influence in proportion to his family, fortune, talents, and virtue; a consummation which every benevolent person must wish to see, but which no other constitution has produced.

The separation of the poor to mount Janiculum, in the year of Rome 466, was occasioned by the exclusive rights which the senators possessed, of composing the juries in all trials. For notwithstanding the respected laws against usury and against personal slavery for debt, yet it appears by history, that the judges, being themselves lenders, were shamefully partial to creditors, and did not execute these laws; by

which means the poor were often greatly oppressed, and many of them made slaves. And it was owing to a creditor having used a young man, who for debt had become his slave, in the most cruel manner, (because he would not allow the creditor to gratify an unnatural passion) that irritated the poor at this time, and made them leave the city. To pacify these people, the law of Valerius and Hortensius was renewed, making laws enacted in the commitia by tribes binding upon the whole society. These poor people did not see, that while they had no control over the judges, they could not expect regular protection, and that renewing this law would not serve them.

The separation of the poor Romans, for the purpose of obtaining a law in their favour by force, when by the constitution every citizen had an equal vote in enacting laws, and when popular feelings and sentiments could so easily be propagated in such numerous assemblies, seems to be a decisive proof, that the rich, though

fewer in number, will always have sufficient influence upon such a number of the poor in every society, as to oppose with effect every attempt of the low ranks to obtain complete protection, and therefore, there is not the smallest chance, that a majority can ever be induced, especially when voting in small bodies, to enact laws to oppress the rich, even where the lowest ranks are allowed equal votes with the highest. Hence it appears, that when the sovereign power is exclusively in the hands of the higher ranks, whether it is exercised illegally, as in Rome after the murder of the Gracchi, and by the European barons, or legally, as in Rome while the votes were taken by centuries, and as in the governments of Britain, France, and America, where a few men possess the sovereign power; in whatever way it is exercised, the persons and property of the society are constantly in jeopardy, from the seditions occasioned by the insolence of the higher ranks to, and their oppression of the lower, and from the convulsions produced by

the rich forming parties, struggling for power. And this situation of things, by obliging every person to join one of the parties, to obtain protection, places, and influence, has a direct tendency to concentrate power into fewer and fewer hands, until it ends in despotism; and the tyranny of despots, has always been found to be severest upon the highest ranks, and least severe upon the lowest.

However much, therefore, it may gratify the pride of the vain and ignorant part of the higher ranks, to prevent the lower from having a share of the sovereign power, they by that means prevent the establishment of the most effectual guard to their own riches and pre-eminence, against the effects of civil commotion; against the tyranny of insolent powerful neighbours; and against the oppression of despots; who are, from pride, and for their own security, the most determined and effectual levellers.

FINIS.

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